United States Court of Appeals

for the Second Circuit

APPENDIX

77-7200

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

UNITED STATES COURT OF APPEALS
FILED
AUG 5 1977
M. DANIEL FUSARO, CLERK
SECOND CIRCUIT

B
P/
v

GERALD L. JOHNSON, CHARLES A. HEMMING, ORION A. LARSON, ROBERT THOMPSON, VIRGIL VALENTINE, individually and as members of the International Organization of Masters, Mates and Pilots of America, AFL-CIO, and the Offshore Division thereof,

Plaintiffs-Appellees,

-against-

FRANK T. SCAVO, as President of the International Organization of Masters, Mates and Pilots and as Executive Officer of the Offshore Division,

Defendant-Appellant.

ON APPEAL FROM AN ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

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(6477)

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PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

	Page
CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES	A-1
SUMMONS	A-2
COMPLAINT	A-3
AFFIDAVIT OF GERALD L. JOHNSON, FOR PLAINTIFFS, IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION	A-8
VERIFIED ANSWER, COUNTERCLAIMS AND THIRD-PARTY COMPLAINT	A-12
EXHIBIT "A" TO VERIFIED ANSWER, COUNTERCLAIMS AND THIRD-PARTY COMPLAINT - FORM OF REFERENDUM	A-19
"ANSWER" OF INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS	A-22
EXHIBIT "A" TO "ANSWER" OF INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS - RESOLUTION ON CONVENTION AGENDA ITEM NO. 57	A-25
EXHIBIT "B" TO "ANSWER" OF INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS - RESOLUTION ON CONVENTION AGENDA ITEM NO. 85	A-27
AFFIDAVIT OF ERNEST ALLEN COHEN, ESQ., FOR DEFENDANT SCAVO, IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION	A-28
EXHIBIT "A" TO COHEN AFFIDAVIT - AFFIDAVIT OF DEFENDANT SCAVO IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION IN CASE NO. 77 Civ. 510	A-33
EXHIBIT "B" TO COHEN AFFIDAVIT - AFFIDAVIT OF DEFENDANT SCAVO IN OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER	A-40
EXHIBIT "C" TO COHEN AFFIDAVIT - AFFIDAVIT OF COHEN IN SUPPORT OF DEFENDANT SCAVO'S MOTION FOR PRELIMINARY INJUNCTION IN CASE NO. 77 Civ. 510	A-49

TABLE OF CONTENTS

	Page
TRANSCRIPT	A-71
OPINION	A-153
ORDER	A-164
NOTICE OF APPEAL	A-166
ORDER OF COURT OF APPEALS DENYING EXPEDITED APPEAL	A-168
NOTICE OF MOTION FOR COMPLIANCE WITH ORDER OF DISTRICT COURT	A-169
AFFIDAVIT OF JACK STEINMAN, ESQ., FOR PLAINTIFFS, IN SUPPORT OF MOTION FOR COMPLIANCE	A-171
EXHIBIT "A" TO STEINMAN AFFIDAVIT - LETTER FROM PLAINTIFFS' ATTORNEYS TO U.S. DEPARTMENT OF LABOR DATED APRIL 15, 1977	A-175
EXHIBIT "B" TO STEINMAN AFFIDAVIT - LETTER FROM U.S. DEPARTMENT OF LABOR TO PLAINTIFFS' ATTORNEYS DATED APRIL 28, 1977	A-177
PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR COMPLIANCE	A-178
NOTICE OF CROSS-MOTION FOR CLARIFICATION OF ORDER	A-182
AFFIDAVIT OF ERNEST ALLEN COHEN, FOR DEFENDANT SCAVO, IN SUPPORT OF CROSS-MOTION FOR CLARIFICATION AND IN OPPOSITION TO MOTION FOR CONTEMPT	A-184
EXHIBIT "A" TO COHEN AFFIDAVIT - ORDER ENTERED APRIL 11, 1977 (reproduced herein at pages A-164 - A-165)	A-192
EXHIBIT "B" TO COHEN AFFIDAVIT - PROPOSED ORDER AND PERMANENT INJUNCTION SUBMITTED BY PLAINTIFFS AND NOT SIGNED BY COURT	A-193
EXHIBIT "C" TO COHEN AFFIDAVIT - TELEX FROM PRESIDENT TO INTERNATIONAL COUNSEL DATED MAY 9, 1977	A-196

TABLE OF CONTENTS

Page

EXHIBIT "D" TO COHEN AFFIDAVIT - TELEX FROM INTERNATIONAL COUNSEL TO DEFENDANT DATED MAY 9, 1977 A-197

EXHIBIT "E" TO COHEN AFFIDAVIT - LETTER FROM DEFENDANT'S ATTORNEYS TO INTERNATIONAL COUNSEL DATED MAY 10, 1977 A-198

EXHIBIT F TO COHEN AFFIDAVIT - LETTER FROM DEFENDANT TO MEMBERS OF THE BALLOT COMMITTEE A-201

DEFENDANT'S MEMORANDUM IN SUPPORT OF CROSS-MOTION FOR CLARIFICATION AND IN OPPOSITION TO MOTION FOR CONTEMPT A-202

AFFIDAVIT OF SHELDON TABAK, ESQ., FOR PLAINTIFFS, IN SUPPORT OF MOTION FOR CONTEMPT AND IN REPLY TO CROSS-MOTION FOR CLARIFICATION A-205

AFFIDAVIT OF MARVIN SCHWARTZ, ESQ., FOR OFFSHORE DIVISION AND INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, IN OPPOSITION TO CROSS-MOTION FOR CLARIFICATION A-210

AFFIDAVIT OF ALLEN B. BRESLOW, ESQ., FOR DEFENDANT SCAVO, IN OPPOSITION TO MOTION FOR CONTEMPT A-223

EXHIBIT "A" TO BRESLOW AFFIDAVIT - RESOLUTION CONCERNING RECLASSIFICATION OF PARTS AND DUES REDUCTION A-228

MEMORANDUM ORDER OF COURT DENYING COMPLIANCE A-232

MEMORANDUM ORDER OF COURT DENYING CLARIFICATION A-233

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

Document	Filed
Summons and Complaint	2/2/77
Verified Answer, Counterclaims and Third-Party Complaint	2/14/77
Affidavit of Defendant Scavo in Opposition to Motion for Preliminary Injunction	3/10/77
"Answer" of International Organization of Masters, Mates and Pilots	3/18/77
Opinion	3/28/77
Order	4/21/77
Notice of Appeal	4/20/77
Transcript	5/4/77
Order of Court of Appeals Denying Expedited Appeal	5/5/77
Notice of Motion and Affidavit for Compliance with Order of District Court	5/10/77
Plaintiffs' Affidavit in Support of Motion for Contempt and in Reply to Cross-Motion for Clarification	5/13/77
Notice of Cross-Motion of Defendant Scavo for Clarification of Order and Supporting Affidavit	5/16/77
Affidavit in Opposition to Cross-Motion for Clarification	5/17/77
Defendant's Affidavit in Opposition to Motion for Contempt	5/17/77
Memorandum Order of Court Denying Compliance	6/17/77
Memorandum Order of Court Denying Clarification	6/17/77

A-2

SUMMONS

SUMMONS IN A CIVIL ACTION

CIV. 1a (3-66)
(Formerly D. C. Form No. 440 Rev. 7-1-71)

United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

77 CIVIL ACTION FILE NO. _____

GERALD L. JOHNSON, CHARLES A. HEMMING, ORION A. LARSON, ROBERT THOMPSON, VIRGIL VALENTINE, individually and as Members of the International Organization of Masters, Mates and Pilots of America, AFL-CIO, and the Offshore Division thereof,

Plaintiffs,

v.

FRANK T. SCAVO, as President of the International Organization of Masters, Mates & Pilots, and Executive Officer of the Offshore Division,

Defendant

SUMMONS

To the above named Defendant :

You are hereby summoned and required to serve upon

TABAK STEINMAN & MELLUSI, ESQS.

plaintiff's attorney , whose address

299 Broadway, New York, N. Y. 10007

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

RAYMOND F. BURGHARDT, ESQ.
Clerk of Court.

B. Wasserman
Deputy Clerk.

Date: 7-7-77

[Seal of Court]

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - -

FOURTH: The Offshore Division is and at all times herein mentioned has been an unincorporated association maintaining its principal offices at 39 Broadway, in the City, County and State of New York, within the jurisdiction of this Court. The Division is composed of several thousand employees employed as Masters and Mates on various ships on the high seas sailing under United States registry.

FIFTH: Plaintiffs are and at all times material herein have been members in good standing of the Division.

SIXTH: Plaintiffs hold the following offices:

Gerald L. Johnson - International Executive Vice-President, International Organization of Masters, Mates and Pilots.

Orion A. Larson - Vice-President, Pacific, Offshore Division.

Charles A. Hemming - Vice-President, Atlantic, Offshore Division.

Robert P. Thompson - Assistant Port Agent (New York) Offshore Division.

SEVENTH: Defendant Frank T. Scavo is International President, International Organization of Masters, Mates and Pilots.

EIGHTH: The By-Laws of the Division, presently in effect provide in part as follows:

ART. XVIII, Section 1

> "These By-Laws may be amended by a secret majority referendum vote of the Division's membership."

COPY AVAILABLE

"Proposed amendments may be submitted to such membership vote by either a majority vote of Offshore Division Executive Council or by a petition signed by fifteen percent (15%) of the Division's members in good standing."

ART. XVIII, Section 2

"An impartial balloting agency shall conduct all referenda required by this Article."

NINTH: In compliance with the aforesaid provision, plaintiffs initiated a petition (same being annexed as Exhibit A to the Affidavit of Gerald L. Johnson, sworn to February 1, 1977, submitted herewith as part hereof) herein referred to as Proposition No. 1; on or about January 12, 1977, the petition having been signed by more than the requisite 15% of the Division's members in good standing, was presented to defendant Scavo for submission to a secret majority referendum vote.

TENTH: Beginning on or about January 21, 1977, plaintiffs have been informed by defendant Scavo that he was going to initiate a second proposal (same being annexed as Exhibit B to the aforesaid affidavit of Gerald L. Johnson), herein referred to as Proposition No. 2, the defendant Scavo purportedly acting alone and under the color of authority allegedly conferred on the President by the Constitution of the International Organization of Masters, Mates and Pilots.

ELEVENTH: Plaintiffs are further advised by defendant Scavo that Proposition No. 2 would be simultaneously presented and mailed to the membership for vote, along with Proposition No. 1.

TWELFTH: That plaintiffs objected to the aforesaid proposed action of the defendant, pointing out inter alia that the aforesaid propositions taken together were misleading and that simultaneous submission of the two propositions was otherwise objectionable and wrongful.

THIRTEENTH: That defendant has failed and neglected to comply with plaintiffs' request and has acted in a manner contrary to the Constitution of the International Organization of Masters, Mates and Pilots, and By-Laws of the Division, in violation of Title 29 USC §411 (a), (1), (2), (3) and contrary to the mandate and spirit of the law in this Circuit, set forth in Sheldon v. O'Callaghan, 497 2d 1276 (1974) and has engaged in conduct and patterns of resistance to the full exercise of the rights and privileges of the plaintiffs and members of the Division.

FOURTEENTH: That notwithstanding plaintiffs' protests, the defendant, at least through January 31, 1977, has adhered to his wrongful intent aforesaid and on said date, defendant Scavo requested the American Arbitration Association to go forward with balloting on both referenda.

FIFTEENTH: That in so doing, defendant Scavo has acted arbitrarily and wrongfully, and as plaintiffs are informed, contrary to the opinion and advice of legal counsel for the International Organization of Masters, Mates and Pilots.

SIXTEENTH: That the defendant's proposed action in ordering a mailing of both Proposition No. 1 and No. 2 simultaneously is unauthorized and completely beyond his lawful powers as President; that such proposed action is wrongful and misleading in that it deprives the plaintiffs and the membership of the Offshore Division of a free choice with regard to Proposition No. 1, thereby causing them irreparable harm; additionally such proposed action is unauthorized and wrongful and tends to cause irreparable harm by reason of its concomitant effect on a forthcoming election, since part of the subject matter of Proposition No. 1 deals with various offices due to be voted upon which the aforementioned proposition seeks to downgrade or abolish.

SEVENTEENTH: That defendant's proposed action is unauthorized, wrongful and misleading and will cause irreparable harm for which money damages at law will be wholly inadequate.

WHEREFORE, plaintiffs pray for a temporary restraining order and for an order preliminarily and permanently enjoining the defendant, and all other persons and organizations in active concert or participation with him from mailing and/or submitting the Proposition No. 2 to the membership until Proposition No. 1 has been voted upon by the membership and accepted or rejected by it.

Plaintiffs further pray for the costs of suit and for such additional and further relief as the interests of justice may require.

Yours, etc.,

TABAK, STEINMAN & MELLUSI
Attorneys for Plaintiffs

BY: _____
RALPH J. MELLUSI
A Member of the Firm
Office & P. O. Address
299 Broadway - Suite 410
New York, New York 10007
WOrth 2-1590

BEST COPY

AFFIDAVIT OF GERALD L. JOHNSON, FOR PLAINTIFFS,
IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

GERALD L. JOHNSON,
CHARLES A. HEMMING,
ORION A. LARSON,
ROBERT THOMPSON,
VIRGIL VALENTINE, individually and as members of the International Organization of Masters, Mates and Pilots of America, AFL-CIO, and the Offshore Division thereof,

Plaintiffs,

- against -

FRANK T. SCAVO, as President of the International Organization of Masters, Mates & Pilots, and Executive Officer of the Offshore Division,

Defendant.

AFFIDAVIT

- -x

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

GERALD L. JOHNSON, being duly sworn, deposes and says:

That I am the first named plaintiff in the within action, that I am the executive Vice-President of the International Organization of Masters, Mates and Pilots and a member in good standing of that organization, as well as of the Offshore Division thereof, that I have been a member of the aforesaid Union since approximately 1945.

That I make the within affidavit in support of the instant application for a temporary restraining order enjoining the defendant herein from submitting and/or mailing to the membership for a vote, Proposition No. 2, hereinafter referred to in greater detail.

AVAILABLE

That in approximately October of 1975, along with other members of the Union, I undertook, pursuant to the Constitution of the International and the by-laws of the Offshore Division thereof, preliminary steps leading to reforms for the benefit of the membership which would encompass among other things, a reduction in the number of paid positions within the Union, and increase in efficiency, and simultaneously a diminution in expense.

Pursuant to applicable Union regulations, there were obtained some 800 signatures on on petition to the President, containing the aforesaid proposed changes, requiring submission by him to the Union membership for a vote in the form of a referendum, a copy of which is attached hereto and marked Exhibit A, being the same document as is referred to in the complaint as Proposition No. 1.

In due course and on or about January 12, 1976, I submitted the petitions to International President Scavo, so that he could take the necessary steps whereby the changes requested by the petitions would be voted upon by the membership through the machinery of the American Arbitration Association, in accordance with applicable Union rules.

Shortly thereafter, President Scavo took steps leading to the simultaneous submission to the membership of his own referendum on the same subject matters. Annexed hereto and made a part hereof, and marked Exhibit B, is a copy of President Scavo's proposed referendum which is the same document as is referred to in the complaint as Proposition No. 2.

In my opinion, the simultaneous submission of the two referenda is not only forbidden by applicable Union rules and regulations contained in the Constitution and by-laws, it is a source of confusion and an impediment to a free choice by the membership of the changes proposed in Proposition No. 1. Additionally, such simultaneous submission not only beclouds the substantive content of Proposition No. 1, it also tends to mislead as to the source of the proposed reforms.

Further, and in my opinion, not only is the proposed simultaneous submission of referenda contrary to applicable regulations, it will also have additional serious effect upon a scheduled forthcoming election of Union officials soon to be held with the nominating period to commence in June of 1977. This is true because part of the subject matter of Proposition No. 1 deals with various offices to be downgraded or abolished.

Your deponent is advised and informed that not only is it his opinion, but it is also the opinion of Robert J. Lowen, International Secretary-Treasurer of the International Organization of Masters, Mates and Pilots that the simultaneous submission of President Scavo's referendum with the referendum authorized by the petition of the membership, is contrary to Union regulations.

Furthermore, it is the opinion of Marvin Schwartz, Esq., counsel to the International Organization of Masters, Mates and Pilots, that the simultaneous submission of the two referenda is violative of Union regulations. Annexed hereto and made a part

is a copy of a letter from Mr. Schwartz to Mr. Scavo to the foregoing effect, dated January 31, 1977 and marked Exhibit C, and a copy of a letter, dated December 10, 1976 from Mr. Epstein to Mr. Scavo, (Mr. Burton M. Epstein being Mr. Schwartz's associate) copy of which is annexed hereto and marked Exhibit D.

Under established Union practice, the voting period on referenda such as Proposition No. 1 is 90 days. Unless the vote is taken on Proposition No. 1 unencumbered by any other similar proposition, the membership will have been denied the right to an election which will reflect the results of the referendum in regard to the number of offices to be voted upon and in other respects, and the harm caused thereby will be irreparable.

For all the foregoing reasons, deponent respectfully prays for an order restraining the defendants from submitting to the membership Proposition No. 2 (the proposition formulated by President Scavo) or any similar referendum which would have the effect of diluting Proposition No. 1 and so misleading the membership as to the contents of Proposition No. 1, to deprive the membership of the clear-cut vote to which it is entitled.

GERALD L. JOHNSON

Sworn to before me this 1st
day of February, 1977.

Notary Public

Notary Public, State of New York
Qualified in Queens County
Commission Expires March 30, 1977

VERIFIED ANSWER, COUNTERCLAIMS AND THIRD-PARTY COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X

GERALD L. JOHNSON,
CHARLES A. HEMMING,
ORION A. LARSON,
ROBERT THOMPSON,
VIRGIL VALENTINE, individually and as members of the International Organization of Masters, Mates and Pilots of America, AFL-CIO, and the Offshore Division thereof,

Plaintiffs,

- against -

FRANK T. SCAVO, as President of the International Organization of Masters, Mates and Pilots, and Executive Officer of the Offshore Division,

Defendant and Third Party Plaintiff

- against -

ROBERT J. LOWEN, individually and as International Secretary/Treasurer,
MARVIN SCHWARTZ, individually and as International Counsel,

Third Party Defendants.

----------X

VERIFIED ANSWER COUNTERCLAIMS AND THIRD-PARTY COMPLAINT

77 Civ. 489

Defendant and Third Party Plaintiff, FRANK T. SCAVO, as President of the International Organization of Masters, Mates and Pilots ("International"), and Executive Officer of the Offshore Division ("Offshore Division"), by his attorneys Jaffe Cohen Crystal & Mintz, as general counsel of the Offshore Division, respectfully shows this court as follows:

FIRST: Denies each and every allegation contained in Paragraph EIGHTH of the Complaint, except admits that the portions of the By-Laws of the Offshore Division quoted in

Paragraph EIGHTH are accurately quoted, but that the same is incomplete and misleading in that it fails to refer this court to the Constitution of the International, Article IX Section 4(a) and Article XI Section 1(i) which provide respectively as follows:

"a) Each subordinate body shall adopt By-Laws or rules governing all aspects of its operation not in conflict with this Constitution. Such By-Laws shall be adopted and amended only by a majority referendum vote.

Any Article in the By-Laws of any subordinate body conflicting with this Constitution is void and may not be enforced. No subordinate body may alter or amend any part of this Constitution," and "It shall be the duty of the International President and he is hereby authorized to:

(i) direct that a referendum vote or a vote by membership meeting be held by the membership of any subordinate body on any matter, issue or proposition when he believes that the welfare of the membership of the subordinate body will be protected or enhanced by such action."

<u>SECOND</u>: Denies each and every allegation of Paragraph NINTH of the Complaint, except admits and alleges that a certain purported petition alleged to have contained requisite signatures by 15% of the Division's members was presented to the plaintiff on or about January 12, 1977 and the Defendant and Third Party Plaintiff did therefore direct that verification procedures be instituted in order to determine the validity of the alleged petition. Such verification procedures have not yet been concluded.

THIRD: Denies each and every allegation of Paragraph TENTH and ELEVENTH, except admit and allege that Defendant, Third Party Plaintiff did in accordance with the International Constitution direct that a referendum be conducted in the form annexed as Exhibit A hereof.

FOURTH: Denies each and every allegation of Paragraph TWELFTH of the Complaint, in that the statements referred to were incomplete and misleading and related to other statements and conversations and admits and alleges that plaintiffs undertook a course of conduct including threats directed to the Defendant and Third Party Plaintiff and to others including the American Arbitration Association and Captain Gene Laski for the purpose of preventing Defendant, Third Party Plaintiff from discharging his constitutional authority with respect to the said referendum and refused to carry forward valid and lawful directions of the Defendant and Third Party Plaintiff in his capacity as International President and in his capacity as Executive Officer of the Offshore Division.

FIFTH: Denies each and every allegation of Paragraph THIRTEENTH and FOURTEENTH, except admits and alleges that defendant, Third Party Plaintiff did in accordance with his constitutional authority and duties attempt to proceed to carry forward the referenda in the form annexed as Exhibit A hereto.

SIXTH: Denies each and every allegation of Paragraph FIFTEENTH of the Complaint, except admits and alleges that Defendant, Third Party Plaintiff consulted with International

Counsel in accordance with the provisions of Article VI, Section 1(d) and decided on all points of law and interpretations of the Constitution in accordance therewith.

SEVENTH: Denies each and every allegation of Paragraphs SIXTEENTH and SEVENTEENTH of the Complaint.

AS AND FOR A FIRST COUNTERCLAIM

EIGHTH: Repeats and realleges each and every allegation contained in Paragraphs First through Sixth hereof.

NINTH: Jurisdiction of this action is conferred upon the court by title 29 U.S.C. Section 401 et seq.

TENTH: Pursuant to Article VI Section 1(i) of the International Constitution, the International President is given authority to direct a referendum vote by the membership of any subordinate body of any matter, issue or proposition when he believes that the welfare of the membership of the subordinate body will be protected or enhanced by such action.

ELEVENTH: The Defendant, Third Party Plaintiff, as International President did direct that a referendum vote of the Offshore Division membership be conducted by the American Arbitration Association acting as impartial ballot agency and that such referendum be in the form of the ballot annexed as Exhibit A hereto.

TWELFTH: The Plaintiffs directly and indirectly and through the use of agents, employees, confederates and others acting in concert with them did engage in a campaign to interfere with and prevent the conduct of the referendum to deprive the members of their free choice with respect to the issues raised

in the referendum and to usurp the power and authority of the Defendant, Third Party Plaintiff as International President and as Executive Officer of the Offshore Division. Such campaign included threats of non-payment to the American Arbitration Association, threats of law suits and other action against the Defendant, Third Party Plaintiff and against his Executive Assistant for the Offshore Division, Captain Gene Laski, refusal to recognize the authority of Offshore Division General Counsel duly designated by Defendant, Third Party Plaintiff in accordance with the authority vested in him pursuant to Article VI, Section 1 of the By-Laws of the Offshore Division, threats to withhold payment from General Counsel of the Offshore Division so designated, refusal to carry forward directions of the Defendant, Third Party Plaintiff acting as International President and Executive Officer of the Offshore Division in accordance with Article VI of the By-Laws of the Offshore Division and Article VI of the Constitution of the International. Issuing misleading, confusing and insubordinate statements to other officers, members and employees of the International and the Offshore Division and other similar conduct.

THIRTEENTH: As a result of such conduct by the Plaintiffs and others acting in concert with them as aforesaid, the members of the Offshore Division have been or are threatened to be deprived of their rights to free choice and the members of the International and the Offshore Division are threatened to be deprived of the full and unfettered services of the International President and the Executive Officer of the Offshore Division, and the Defendant, Third Party Plaintiff has been or is threatened

to be deprived of his authority and ability to fulfill his responsibilities as the International President and as the Executive Officer of the Offshore Division.

AS AND FOR A THIRD PARTY COMPLAINT AGAINST ROBERT J. LOWEN AS INTERNATIONAL SECRETARY/TREASURER, AND MARVIN SCHWARTZ IS INTERNATIONAL COUNSEL

FOURTEENTH: Repeats and realleges each and every allegation contained in Paragraphs First through Sixth and Ninth through Thirteenth hereof.

FIFTEENTH: Lowen and Schwartz acted in concert with Plaintiffs in each and every act of the aforesaid compaign as previously set forth.

WHEREFORE, Defendant, Third Party Plaintiff demands judgment against the Plaintiffs dismissing the complaint with costs and expenses, including the reasonable counsel fees and demands judgment against the Plaintiffs with respect to the counterclaim enjoining the Plaintiffs from any further interference with the conduct of the referenda and from any further acts for the purpose of preventing or interfering with the Defendants, Third Party Plaintiff carrying out his duties and responsibilities as International President and International President of the Offshore Division and demands judgment against the Third Party Defendants carrying out his duties and responsibilities as International President and International President of the Offshore Division and demands judgment against the Third Party Defendants, together with costs and expenses including counsel fees

such other relief or different relief as may be just and proper under the circumstances.

Yours, etc.

JAFFE COHEN CRYSTAL & MINTZ

By_____
ERNEST ALLEN COHEN
A member of the firm
Office & P.O. Address
275 Seventh Avenue
New York, New York 10001
691-1200

VERIFICATION

STATE OF NEW YORK)
)ss:
COUNTY OF NEW YORK)

FRANK T. SCAVO, being duly sworn, deposes and says: deponent is Defendant and Third Party Plaintiff in the within action; deponent has read the foregoing Verified Answer Counter-claims and Third-Party Complaint,,and knows the contents thereof; the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters deponent believes it to be true.

Sworn to before me this

day of February, 1977

_____
FRANK T. SCAVO

ERNEST ALLEN COHEN
Notary Public, State of New York

EXHIBIT "A" TO VERIFIED ANSWER, COUNTERCLAIMS AND THIRD-PARTY COMPLAINT - FORM OF REFERENDUM

AMERICAN ARBITRATION ASSOCIATION, ADMINISTRATOR

Official Secret Ballot

INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, OFFSHORE DIVISION

REFERENDUM BALLOT ON PROPOSED OFFSHORE DIVISION BY-LAWS AMENDMENTS

Please read material on reverse side.

VOTING INSTRUCTIONS

1. Mark the ballot in the box which expresses your choice.
2. Place your ballot inside the small blue envelope which has the words **SECRET BALLOT** on the front, and seal the envelope.
3. Put the sealed blue **SECRET BALLOT** envelope inside the blue return envelope addressed to the American Arbitration Association.
4. **RECORD YOUR NAME, ADDRESS, SOCIAL SECURITY NUMBER AND SIGNATURE** on the front of the blue return envelope addressed to the American Arbitration Association. (This is for control purposes only. The secrecy of your vote will be protected because the **SECRET BALLOT** envelope will be separated from the return envelope before counting.)
5. Mail the blue reply envelope as soon as possible. No postage is necessary if mailed in the United States. **YOUR REPLY ENVELOPE MUST BE RECEIVED NO LATER THAN 5 PM, THURSDAY, APRIL 28, 1977.**

SAMPLE

TURN PAGE

PROPOSITION NO. 1

These amendments to the By-Laws of the Offshore Division were proposed by a petition signed by at least 15% of the Division's members in good standing in compliance with Article XVIII, Section 1 of the By-Laws of the Offshore Division.

Article III, Sections 1(b), 1(c) and 1(d) shall be deleted in their entirety and the following language substituted:

Article III, Section 1(b): Offshore Ports shall be classified on the basis of service to the membership. Port classifications approved by this referendum vote shall not be changed for a minimum period of five years following the adoption of this amendment unless such change is submitted to a referendum vote of the membership. Port agents shall be elected in the following ports:

New York, New Orleans, Houston, Wilmington, Calif., San Francisco, Seattle.

Executive Assistant Port Agents shall be elected in the following Ports:

New York New Orleans San Francisco

Assistant Port Agents shall be elected in the following ports:

New York (3) New Orleans (2) Houston (1) Baltimore (1)
Galveston (1) San Francisco (2)

Field Representatives may be appointed in the following ports:

Philadelphia	Port Arthur	Jacksonville, FL
Norfolk	Honolulu	Charleston, S.C.
Mobile	Portland, Ore.	San Juan, Puerto Rico
Tampa	Boston	Hollywood, FL

Article III, Section 1(c): The three elected Vice Presidents shall not be in addition to the elected Port Agents. The Vice President (Atlantic) shall be the Port Agent of the Port of New York; the Vice President (Pacific) shall be the Port Agent of the Port of San Francisco; the Vice President (Gulf) shall be the Port Agent of the Port of New Orleans.

Article III, Section 1(d): As economic necessity or as service to the membership may require, the Offshore Division Executive Council shall, by its majority vote, have the authority to close, reclassify or merge ports and to designate all Field Representatives subject to the limitation of Section 1(b) above.

Article IX, Section 1, shall be amended wherever and in such respects as are necessary to provide the following:

1. Only duly elected Port Agents shall be members of the Offshore Division Executive Council in addition to the first six enumerated officers named in this Section 1.

Article XI, "Income and Assets" shall be amended to substitute five (5%) percent in lieu of six (6%) percent of the gross amount of each vacation benefit received for work performed on any MM&P contracted vessel, and to substitute five (5%) percent in lieu of six (6%) percent of each vacation benefit received by every MM&P Offshore Division Official.

ORIGINAL

PROPOSITION NO. 2

This Referendum vote was authorized by the President of the International Organization of Masters, Mates & Pilots under the authority granted to him in Article VI, Section 1, paragraph (i) of the Constitution of the International Organization to direct a Referendum vote by the membership of any subordinate body on any proposition when he believes that the welfare of the membership of that subordinate body will be protected or enhanced by approval of such proposition.

WHEREAS, the President of the International Organization of Masters, Mates and Pilots made a thorough study of the financial condition of the Offshore Division, and

WHEREAS, it is feasible at this time to reduce membership dues.

NOW, THEREFORE, BE IT RESOLVED that Article XI of the Offshore Division By-Laws, "Income and Assets" shall be amended to substitute four (4%) percent in lieu of the six (6%) percent of the gross amount of each vacation benefit received for work performed on any MM&P-contracted vessel and to substitute four (4%) percent in lieu of six (6%) percent of each vacation benefit of every MM&P Offshore Division Official; and

BE IT FURTHER RESOLVED that this reduction of membership dues will be attained by effecting a practical reduction of operating costs of the Offshore Division without curtailing service to the membership.

This amendment shall be effective upon its adoption and shall apply to any vacation benefits earned subsequent to its adoption.

Vote for one only

Proposition No. 1 ☐

Proposition No. 2 ☐

Neither Proposition ☐

OFFICIAL BALLOT

"ANSWER" OF INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

GERALD L. JOHNSON, CHARLES A. HEMMING, ORION A. LARSON, ROBERT THOMPSON, VIRGIL VALENTINE, individually and as members of the International Organization of Masters, Mates and Pilots of America, AFL-CIO, and the Offshore Division thereof,

Plaintiffs,

-against-

FRANK T. SCAVO, as President of the International Organization of Masters, Mates and Pilots and as Executive Officer of the Offshore Division,

Defendant.

----------x

77 Civ. 489 (LWP)

ANSWER OF DEFENDANTS INTERNATIONAL ORGANIZATION OF MASTERS MATES AND PILOTS AND ITS SUBORDINATE BODY THE OFFSHORE DIVISION

Defendants, the International Organization of Masters, Mates and Pilots and its subordinate body, the Offshore Division, by their attorney, Marvin Schwartz as and for their Answer to the Complaint herein, respectfully shows this Court as follows:

FIRST: Admits the allegations contained in paragraph FIRST of the Complaint.

SECOND: Admits the allegations contained in paragraph SECOND of the Complaint.

THIRD: Denies that the defendant is a labor organization within the meaning of the National Labor Relations Act but admits that it is a labor organization within the meaning of the Labor Managment Reporting and Disclosure Act.

FOURTH: Admits the allegations contained in paragraph FOURTH of the Complaint.

FIFTH: Admits the allegations contained in paragraph FIFTH of the Complaint.

SIXTH: Admits the allegations contained in paragraph SIXTH of the Complaint.

SEVENTH: Admits the allegations contained in paragraph SEVENTH of the Complaint.

EIGHTH: Admits that Article XVIII, Section 1 of the Offshore Division By-Laws is the only procedure by which the By-Laws may be amended. Defendant further specifically admits that the International President does not have any authority to submit to the Offshore Division membership any Proposition which purports to amend the Offshore Division By-Laws.

The defendant further admits and alleges that at the 63rd International Convention of the International Organization of Masters, Mates and Pilots, commencing February 8, 1977, Convention Agenda Item No. 57 was passed by an almost unanimous vote (Attached hereto as Exhibit "A").

NINTH: Admits the allegations set forth in paragraph NINTH of the Complaint. The defendant further admits and alleges that at the 63rd International Convention of the International Organization of Masters, Mates and Pilots, commencing February 8, 1977, Convention Agenda Item No. 85 was passed by an almost unanimous vote (Attached hereto as Exhibit "B").

TENTH: Admits the allegations contained in paragraph TENTH of the Complaint.

ELEVENTH: Admits the allegations contained in paragraph ELEVENTH of the Complaint.

TWELFTH: Admits that the simultaneous submission of the two propositions was, under the circumstances of the instant action, objectionable and wrongful.

THIRTEENTH: Denies the allegations contained in paragraph THIRTEENTH of the Complaint except that the defendants admit that Scavo acted in a manner contrary to the defendants' Constitution and Offshore Division By-Laws, and consequently, outside of his scope of authority as International President.

FOURTEENTH: Denies the allegations contained in paragraph FOURTEENTH of the Complaint except that the defendant admits that defendant Scavo ordered the American Arbitration Association to proceed with the balloting on Proposition No. 1 and Proposition No. 2.

FIFTEENTH: Admits the allegations contained in paragraph FIFTEENTH of the Complaint.

SIXTEENTH: Denies the allegations contained in paragraph SIXTEENTH of the Complaint except that defendant admits that the mailing of Proposition No. 1 and Proposition No. 2 was unauthorized and outside the scope of defendant Scavo's authority as International President.

SEVENTEENTH: Admits the allegations contained in paragraph SEVENTEENTH of the Complaint.

WHEREFORE, defendants having answered the Complaint herein respectfully request that this Court grant the plaintiff the following relief:

1. That the referendum currently in progress containing Proposition No. 1 and Proposition No. 2 be and it hereby is declared to be null and void.

DATED: New York, New York
March 18, 1977

Yours, etc.

MARVIN SCHWARTZ, P.C.
Attorney for Defendants
International Organization
of Masters, Mates and Pilots
and its subordinate body the
Offshore Division
243 Waverly Place
New York, New York 10014

EXHIBIT "A" TO "ANSWER" OF INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS - RESOLUTION ON CONVENTION AGENDA ITEM NO. 57

63rd Convention
San Diego, California
Kona Inn
February 8, 1977

Agenda Item 57

SUBJECT Affirmation International President does not have authority to initiate referenda to amend International Constitution or Offshore Division By-Laws and declaring Illegal and Void such Referenda

If Constitutional Amendment:

Article _____ **Section** _____ **Page** _____

Submitted by Allen Scott

COMMITTEE Resolutions and Petitions

RESOLUTION

BE IT RESOLVED:

1. Neither Article VI, Section 1(i) nor any other provisions of the International Constitution or the Offshore Division By-Laws grants the International President the authority to initiate, on his own, a referendum to the Offshore Division membership which purports to or would amend the Offshore Division By-Laws, the two exclusive ways by which any proposed amendments to the Offshore Division By-Laws, may be promulgated being set forth in the Offshore Division By-Laws; Article XVIII, Section 1.

2. That neither Article VI, Section 1(i) nor any other provisions of the International Constitution grants the International President the authority to initiate, on his own, a referendum to the membership of the I O M M & P which purports to or would amend the International Constitution, the exclusive way by which any such proposed amendments may be promulgated for submission to the membership for referendum vote being contained in Article X Section 1(a) of the Constitution.

3. That the action of the International President in promulagating and seeking and causing to be sent out to the Offshore Division membership a referendum ballot entitled "Proposed Offshore Division By-Laws Amendments for Fiscal Autonomy" was and is in violation of the International Constitution and the Offshore Division By-Laws, and consequently was and is illegal and a nullity and all activities with respect thereto shall forthwith cease and terminate and notification thereof shall forthwith be given to the membership of the Offshore Division, the American Aribtration Association and all other parties and persons having any interest therein or connection therewith, includingthe Honorable Lawrence W. Pierce, U. S. District Judge for the Southern District of New York.

4. That the action of the International President in promulgating and seeking and causing to be sent out to the Offshore Division Membership a referendum ballot by which the Offshore Division membership was given a choice to vote on a proposition stated to be promulgated by him pursuant to the International Constitution, Article VI, Section 1(i), relating in part to a reduction in Offshore Division Membership dues, which proposition was sent out as an alternative to a proposition promulgated by membership petition, was and is in violation of the International Constitution and the Offshore Division By-Laws, and consequently was and is illegal, void and nullity and all activities with respect thereto shall forthwith cease and terminate and notification thereof shall forthwith be given to the membership of the Offshore Division ~~Division,~~ the American Arbitration Association and all other parties and persons having any interest therein or connection therewith, including the Honorable Lawrence W. Pierce, U. S. District Judge for the Southern District of New York.

EXHIBIT "B" TO "ANSWER" OF INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS - RESOLUTION ON CONVENTION AGENDA ITEM NO. 85

63rd Convention
San Diego, California
Kona Inn
February 8, 1977

Agenda Item 85

SUBJECT Offshore Petition for Reclassification of Ports

If Constitutional Amendmant:

Article _____ Section _____ Page _____

Submitted by R.J. Soriano

COMMITTEE Resolution and Petition

RESOLUTION

BE IT RESOLVED THAT,

the proposition for amending the By-Laws of the Offshore Division submitted by Offshore Division membership petition, which deals with reclassification of ports and a reduction of Offshore Division membership dues, which was properly proposed by a petition signed by members of the Offshore Division in good standing, in accordance with Article XVIII, Section 1 of the Ofrshore Division By-Laws, be forthwith sent out separately to the Offshore Division membership in a referendum ballot to be voted for on a "yes" or "no" basis.

AFFIDAVIT OF ERNEST ALLEN COHEN, ESQ., FOR DEFENDANT SCAVO, IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GERALD L. JOHNSON, CHARLES A. HEMMING, ORION A. LARSON, ROBERT THOMPSON, VIRGIL VALENTINE, individually and as members of the International Organization of Masters, Mates and Pilots of America, AFL-CIO, and the Offshore Division thereof,	
Plaintiffs,	
-against-	
FRANK T. SCAVO, as President of the International Organization of Masters, Mates and Pilots, and Executive Officer of the Offshore Division,	
Defendant and Third Party Plaintiff,	AFFIDAVIT IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION
-against-	77 Civ. 489
ROBERT J. LOWEN, individually and as International Secretary/Treasurer, MARVIN SCHWARTZ, individually and as International Counsel,	
Third Party Defendants.	

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

ERNEST ALLEN COHEN, being duly sworn, deposes and says:

1. I am a member of the law firm of Jaffe Cohen Crystal & Mintz, General Counsel for the Offshore Division of the International Organization of Masters, Mates and Pilots, and Counsel for Frank T. Scavo, the Defendant in this action, acting

in his capacity as Executive Officer of the Offshore Division. This affidavit is made in opposition to a motion for a preliminary injunction brought by the Plaintiffs for the purpose of attempting to prevent the processing of a referendum vote with respect to a ballet submitted to the membership of the Offshore Division of the International Organization of Masters, Mates and Pilots by direction of Defendant, Frank T. Scavo, through the American Arbitration Association, an impartial ballot agency, acting as administrator of the election.

2. Deponent incorporates by reference herein and annexes hereto as Exhibit "A" an affidavit of your deponent sworn to on February 16, 1977, in opposition to a motion for a preliminary injunction in case number 77 Civ. 510 and as Exhibit "B" an affidavit by Frank T. Scavo sworn to February 3, 1977, heretofore submitted in opposition to the application for temporary restraining order with respect to this case.

3. Deponent also incorporates by reference herein and annexes hereto as Exhibit "C" an affidavit by your deponent sworn to February 14, 1977, submitted in support of a motion on behalf of Defendant, Frank T. Scavo for a preliminary injunction in 77 Civ. 510 and requests that the Court refer to the Memorandum of Law submitted in opposition to the application for preliminary injunction in that case.

4. The two propositions submitted for membership approval that are the subject of this case are clearly interrelated in that each seeks a reduction in that portion of membership dues as are calculated based upon vacation benefits. Proposition

number 1, submitted by membership petition, seeks to reduce the dues from six (6%) percent to five (5%) percent and incorporated therein is a specific reclassification of ports and a provision providing for the appointment of 12 field representatives. Proposition number 2, submitted by direction of Defendant, Frank T. Scavo, as International President, would reduce the dues from six (6%) percent to four (4%) percent in conjunction with "affecting a practical reduction of operating costs of the Offshore Division without curtailing service to the membership". When confronted with these clearly alternative provisions, the American Arbitration Association, the Administrator of the referendum, in its professional judgment, determined that to submit these two propositions separately would cause chaos and confusion in the minds of the membership of the Offshore Division. It is submitted that the determination of the professional involved in the election process was not capricious or irrational and this Court should not set aside that determination nor substitute its judgment for that of the impartial ballot agency.

5. The position advocated by the Plaintiffs would, in effect, deprive the International President of his power to initiate a referendum simply because an alternative referendum was submitted by petition pursuant to Offshore Division By-Laws. Plaintiffs have cited no provision of either the International Constitution or the Offshore Division By-Laws to support such position, nor do such provisions exist. In fact, were such a provision to exist in the By-Laws of the Offshore Division, that

provision would be a nullity since it would directly conflict with the power of the International President to direct a referendum as set forth in the International Constitution.

6. There are no provisions in either the International Constitution or the Offshore Division By-Laws that require or suggest that there be any waiting time between the submission of referenda to the membership. Neither is there anything in the Constitution or By-Laws that suggest that there is a race between various alternatives propositions so that the first which is completed bars any other proposition on the same subject matter from being presented to the membership.

7. Article VI, Section 1, paragraph (i) of the International Constitution authorizes the President to

> "(i) Direct that a referendum vote. . . be held by the membership of any subordinate body on any matter, issue or proposition when be believes that the welfare of the membership of the subordinate body will be protected or enhanced by such action."

In accordance with the aforesaid grant of authority, the International President, Defendant Frank T. Scavo, authorized the issuance of the referendum ballot that the Plaintiffs seek to prevent. The powers of the President to direct such a referendum is clear and unambiguous and can only be taken away by an amendment of the International Constitution. No other mechanism exists under the International Constitution for altering the

explicit provisions contained in the Constitution. Although various other bodies in the Organization have various powers delegated to them, none of them have the power to amend the Constitution, except by membership referendum.

8. From all the above, it is clear that the Plaintiffs have not demonstrated any reasonable probability of success in this law suit. Were the Court to grant the Plaintiffs' application for a preliminary injunction, the Defendant, Frank T. Scavo, and the membership of the Offshore Division would suffer irremedial injury, loss and damage. Conversely, were the Court to deny the Plaintiffs' application, the Plaintiffs would not suffer any injury or loss whatsoever.

9. The reason this affidavit is made by deponent and not the Defendant, Frank T. Scavo, is that deponent is fully familiar with all of the facts and circumstances herein and Defendant, Frank T. Scavo, is presently in San Diego, California.

ERNEST ALLEN COHEN

SWORN to before me this
16th day of February, 1977.

Notary Public

ALLEN B. BUSLOW
Notary Public, State of New York
No. 30-5247[illegible]
Qualified in Nassau County
Commission Expires March 30, 1978

EXHIBIT "A" TO COHEN AFFIDAVIT - AFFIDAVIT OF DEFENDANT SCAVO IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION IN CASE NO. 77 Civ. 510

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GERALD L. JOHNSON, as International Executive Vice President of the International Organization of Masters, Mates and Pilots, AFL-CIO, and Assistant Executive Officer of the Offshore Division thereof, and individually as a member of the International Organization of Masters, Mates and Pilots and of the Offshore Division thereof, and

ROBERT J. LOWEN, as International Secretary-Treasurer of the International Organization of Masters, Mates and Pilots, AFL-CIO, and Financial Officer of the Offshore Division thereof, and individually as a member of the International Organization of Masters, Mates and Pilots and of the Offshore Division thereof,

Plaintiffs,

-against-

FRANK T. SCAVO, as International President of the International Organization of Masters, Mates and Pilots, AFL-CIO, and as Chief Executive Officer of the Offshore Division thereof, and

ROBERT COULSON, as President of the American Arbitration Association,

Defendants.

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AFFIDAVIT IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

77 Civ. 510 LWP

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

ERNEST ALLEN COHEN, being duly sworn, deposes and says:

1. I am a member of the law firm of Jaffe Cohen Crystal & Mintz, General Counsel for the Offshore Division of the International Organization of Masters, Mates and Pilots, and

Counsel for Frank T. Scavo, the Defendant in this action, acting in his capacity as Executive Officer of the Offshore Division. This affidavit is made in opposition to a motion for a preliminary injunction brought by the Plaintiffs for the purpose of attempting to prevent the processing of a referendum vote with respect to a ballot submitted to the membership of the Offshore Division of the International Organization of Masters, Mates and Pilots by direction of Defendant, Frank T. Scavo, through the American Arbitration Association, an impartial ballot agency, acting as administrator of the election.

2. The attempt to obtain a preliminary injunction against the processing of the referendum involved in this case involves an interpretation of the provisions of the International Constitution setting forth the duties and authority of the International President. This provision is contained in Article VI, Section 1, paragraph (i), which states:

> "It shall be the duty of the International President and he is hereby authorized to: . . . .(i) direct that a referendum vote. . . be held by the membership of any subordinate body on any matter, issue or proposition when he believes that the welfare of the membership of the subordinate body will be protected or enhanced by such action."

3. It is acknowledged by the President that he does not have authority to direct a referendum with respect to any amendment of the Constitution of the Organization or to direct a

referendum to the entire membership of the Organization. On the other hand, the President has relied upon his authority to direct a referendum to the membership of a subordinate body, in this case the Offshore Division, on a matter which he believes affects the welfare of the membership of that subordinate body and which he believes will serve to protect and enhance the welfare of the membership of the subordinate body if they are permitted to express their views with regard to this issue.

4. The particular issue at stake in this matter is an issue which in no way conflicts with the International Constitution, but would set forth membership policy regarding fiscal autonomy of the Offshore Division. It should be noted that the International Constitution in no way infringes upon such fiscal autonomy. As a matter of practice, however, the Offshore Division has continued practices in effect originally during a transition period long since expired covered by By-Laws provisions of the Offshore Division which, it appears clear, were intended to be of no further effect upon the termination of the transition period. The transition period would appear to relate solely to that period of time which occurred subsequent to the adoption of the By-Laws in 1970, but prior to their effective date on January 1, 1972. Thus, it would appear clear that the referendum submitted by the President with respect to fiscal autonomy of the Offshore Division in no way conflicts either with the Constitution or with the By-Laws, but would involve instead a question of establishing policy regarding fiscal autonomy

by the membership of the Offshore Division consistent with the present provisions of the By-Laws and the Constitution. Although it has been argued by the Plaintiffs that the present referendum conflicts with the provisions of the Constitution, they have failed to cite a single provision of the Constitution which in any way would be modified or which would in any way be inconsistent with the terms and conditions of the referendum if it is adopted. The reason for their failure to do so is that there is no such provision which exists in the Constitution which requires any conduct other than that which would be accomplished were the referendum adopted.

5. The facts with regard to this matter are developed in detail in an affidavit by Defendant, Frank T. Scavo, submitted in opposition to the application for a temporary restraining order in case number 77 Civ. 489. A copy of that affidavit is annexed to this affidavit as Exhibit "A" hereof. The facts are also set forth as well as the factual context of the present constitutional crisis of the International Organization of Masters, Mates and Pilots in an affidavit by your affiant sworn to on February 14, 1977, which affidavit has been submitted in support of a motion by Defendant, Frank T. Scavo, for a preliminary injunction with respect to the relief requested in his counterclaims in this action. That affidavit is annexed hereto and made a part hereof as Exhibit "B".

6. At the time of the submission of this affidavit, there will be submitted to this Court a Memorandum of Law establishing that the criteria for the granting of the preliminary injunction in favor of the Plaintiffs in the within action have not been met. There is no showing whatsoever of irreparable injury which would require this Court to grant preliminary relief to prevent the election ballot from going forward. Subsequent to a full and complete trial and hearing of this matter should this Court conclude that the referendum should not be given effect, there will be ample opportunity for the Court to determine to do so by granting an injunction at the conclusion of the trial. There is no showing whatsoever that any change in circumstance would occur before a full plenary hearing could be had with regard to the issues at stake in this case. More significantly, however, there is absolutely no showing of any reasonable probability of success by the Plaintiffs in this law suit. The powers of the President to direct the referendum which he utilized in this case are clear and unambiguous and can only be taken away by an amendment of the International Constitution. No other mechanism exists under the International Constitution for altering the explicit provisions contained in the Constitution. Although various other bodies in the Organization have various powers delegated to them, none of them have the power to amend the Constitution, except by membership referendum.

7. It is not at all inconsistent with this position that preliminary injunctive relief is required by the Defendant,

Frank T. Scavo, in respect to his counterclaims since a clear, immediate and imminent danger is set forth by the President in his affidavit annexed as Exhibit "A" and in my affidavit annexed as Exhibit "B" hereto and in that a reasonable probability of success by the Defendant, Frank T. Scavo, with respect to his counterclaims has been established in Exhibits "A" and "B".

8. The motion by the Plaintiffs for a preliminary injunction is coming on at the same time that a motion by the Plaintiffs in case number 77 Civ. 489 is to be heard by this Court. Many of the matters dealt with in this affidavit and in Exhibits "A" and "B" hereto are similarly applicable with regard to the motion for preliminary injunction in that case. To the extent that the matters contained in that case coincide with the matters contained in this case, the Defendant, Frank T. Scavo, will not burden the Court with repetition of these arguments. It is the strong belief of the Defendant, Frank T. Scavo, that the Court must view the entire constitutional and factual framework of the issues before it in order to be able to determine the importance or appropriateness of granting preliminary relief even though the final conclusion in each case may rest on somewhat different events and provisions. In both this case and case 489, the effort by the Plaintiffs is to prevent the President from exercising his power to direct a membership referendum of the membership of a subordinate body pursuant to his powers as President under Article VI, Section 1, paragraph (i) of the

Constitution. Defendant's counterclaims seek to prevent further on-going interference with the exercise by him of his authority pursuant to this Section and as Executive Officer of the Offshore Division pursuant to Article VI, Section 1 of the By-Laws of the Offshore Division. It is the position of the Defendant, Frank T. Scavo, that it would be approproate for all such issues to be resolved simultaneously by this Court as expeditiously as possible. Nonetheless, the Defendant, Frank T. Scavo, strongly believes that there is no basis whatsoever for the granting of the preliminary relief sought by the Plaintiffs with respect to this motion.

9. From all of the above, it is clear that the Plaintiffs have not demonstrated any reasonable probability of success in this lawsuit. Were the Court to grant the Plaintiffs' application for a preliminary injunction, the Defendant, Frank T. Scavo, and the membership of the Offshore Division would suffer irremedial injury, loss and damage. Conversely, were the Court to deny the Plaintiffs' application, the Plaintiffs' would not suffer any injury or loss whatsoever.

10. The reason this Affidavit is made by deponent and not the defendant, Frank T. Scavo, is that deponent is fully familiar with all the facts and circumstances herein and defendant, Frank T. Scavo, is presently in San Diego, California.

Sworn to before me this
16th day of February, 1977.

ERNEST ALLEN COHEN

Notary Public

EXHIBIT "B" TO COHEN AFFIDAVIT - AFFIDAVIT OF DEFENDANT SCAVO IN OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GERALD L. JOHNSON, CHARLES A. HEMMING, ORION A. LARSON, ROBERT THOMPSON, VIRGIL VALENTINE, individually and as Members of the International Organization of Masters, Mates and Pilots of America AFL-CIO, and the Offshore Division thereof, Plaintiffs, -against- FRANK T. SCAVO, as President of the International Organization of Masters, Mates and Pilots, and Executive Officer of the Offshore Division, Defendant and Third Party Plaintiff, -against- ROBERT J. LOWEN, individually and as International Secretary Treasurer, MARVIN SCHWARTZ, individually and as International Counsel, Third Party Defendants.	AFFIDAVIT BY FRANK T. SCAVO IN OPPOSITION TO ORDER TO SHOW CAUSE OF PLAINTIFFS AND IN SUPPORT OF ORDER TO SHOW CAUSE OF DEFENDANT 77 Civ. 489

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

FRANK T. SCAVO, being duly sworn, deposes and says:

1. I am International President of the International Organization of Masters, Mates and Pilots of America, AFL-CIO (hereinafter "International") and I am also Executive Officer of the Offshore Division of International (hereinafter "Offshore Division").

2. This Affidavit is made in opposition to an order to show cause with temporary restraining order submitted on behalf of the Plaintiffs and in support of an order to show cause with temporary restraining order submitted on behalf of the Defendant. I am fully familiar with the facts and circumstances hereinafter set forth.

3. The International is a maritime union representing the vast majority of licensed deck officers in the American Merchant Marine and is composed of divisions representing ocean-going deck officers who are members of the Offshore Division and pilots and non-ocean-going deck officers and government employees who are deck officers who are members of other divisions of the International.

4. The affairs of the International are governed by a Constitution which authorizes subordinate bodies including the Offshore Division to adopt By-Laws. Article IX, Section 4 of the Constitution provides in paragraph (a):

> "Each subordinate body shall adopt By-Laws or rules governing all aspects of its operation not in conflict with this Constitution. Such By-Laws shall be adopted and amended only by a majority referendum vote.
>
> Any Article in the By-Laws of any subordinate body conflicting with this Constitution is void. Any may not be enforced. No subordinate body may alter or amend any part of this Constitution."

5. Article VI, Section 1, of the Constitution sets forth the duties and authority of the International President. Paragraph (i) of Section 1 of Article IV provides:

> "direct that a referendum vote or a vote by membership meeting be held by the membership of any subordinate body on any matter, issue or proposition when he believes that the welfare of the membership of the subordinate body will be protected or enhanced by such action."

6. It is clear beyond cavil that as President, I have the duty and the authority to direct a referendum to be held by the membership of the Offshore Division with respect to any matter, issue or proposition which I believe will protect or enhance the welfare of the membership of that subordinate body. No subordinate body has the power to diminish or vitiate that authority and, in fact, no subordinate body has ever attempted to do so. In fact, counsel for Plaintiffs in this action admitted that I had such authority by stating:

> "We recognize his [the President] power to direct a referendum. . ." (exhibit to Mellusi Affidavit, page 2)

7. The By-Laws of the Offshore Division provide alternative methods to the President's constitutional authority to initiate referendum. It is clear that these methods were never intended to be exclusive or in conflict with the International Constitution since if they were in conflict with the International Constitution, they would be "void". Nonetheless, it seems clear that providing alternative additional methods of initiating a referendum in no way derogate the constitutional authority vested in the President of the International.

8. The instant action was commenced by Plaintiffs in order to block the submission to the membership by the American Arbitration Association as impartial balloting agency of a referendum containing alternative propositions and which would have permitted the membership to accept either of the alternatives or neither of the alternatives.

9. One of the alternatives was directed by me as International President which, if adopted, would result in reducing that portion of membership dues as are calculated based upon vacation benefits from six (6%) percent to four (4%) percent in conjunction with "affecting a practical reduction of operating costs of the Offshore Division without curtailing service to the membership".

10. The other alternative which was presented by membership petition pursuant to the Offshore Division By-Laws called for a reduction of that portion of membership dues, as are calculated based upon vacation benefits from six (6%) percent to five (5%) percent in conjunction with a plan which would specifically reclassify ports and call for 12 appointed field representatives and which would provide for only one port agent in the Atlantic area, (2) in the Gulf area, and (3) on the west coast.

11. It is clear that each proposition depends upon the economies to be effectuated in order to finance the dues deductions which have been sought. Thus, the contents of each proposition clearly are interrelated. It is clear that the two propositions deal with the same subject matter, but are inconsistent in that one would provide a portion of dues to be charged at five (5%) percent of vacation benefits and would mandate a particular structure for Offshore Division port personnel. Whereas, the other would measure a portion of dues at four (4%) percent of vacation benefits and would direct the

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effectuation of practical economies without curtailment of membership service for the Offshore Division.

12. It is clear that the two propositions cannot both stand. Were they to be separately voted upon, not only would this increase the expense to the Offshore Division of separate mailings and separate ballot counts, but it would also create the possibility of the adoptiong of inconsistent directions. It would have the affect of substantially interfering with the operation of the Offshore Division. It would cause chaos.

13. By permitting the ballot to go forward in the format designated by the American Arbitration Association, the membership will be provided with a clear choice as to the alternatives involved in the two propositions.

14. The American Arbitration Association General Counsel, Gerald Aksen, rendered the opinion on behalf of the American Arbitration Association that to submit the propositions separately would be misleading and confusing.

15. It is my mandate, duty and responsibility to effecuate the referendum so that the membership can have the right to exercise its free choice.

16. The position advocated by the Plaintiffs would in effect deprive the International President of his power to initiate a referendum simply because an alternative referendum was submitted by the petition pursuant to Offshore Division By-Laws. Were such a proposition to be accepted by this Court, the consequence would necessary be to render the Offshore Division By-Laws

AVAILABLE

inconsistent with the Constitution in this regard and, therefore, would render the Offshore Division By-Laws void in this respect. Under such circumstances, only the proposal of the International President could go forward by referendum. It is my desire that the membership of the Offshore Division be given a full choice and, therefore, even if the Offshore Division By-Laws were to be void in this respect, nonetheless, as International President pursuant to my authority under the International Constitution, I would still present the proposal which was submitted by petition to the membership. Thus, even if the position urged by the Plaintiffs were to be accepted, it would cause the Offshore Division By-Laws to be void and I would, nevertheless, direct a referendum to go forward in the manner approved by the American Arbitration Association pursuant to my authority under the International Constitution.

17. I wish to call the Court's attention to the fact that there is no provision in either the International Constitution or the Offshore Division By-Laws that require or suggest that there be any waiting time between the submission of referenda to the membership. Moreover, there is nothing in the Constitutional By-Laws that suggest that there is a race between the various alternative propositions so that the first which is completed bars any other proposition on the same subject matter from being presented to the membership. Moreover, even if such a race were to exist, the proposal by the President was the first to be concluded and ready for submission to the membership since

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the other proposal required validation of signatures and membership in good standing prior to its being in a position for submission. The fact that on the ballot the proposition submitted by petition is designated proposition one and the proposition directed by the President is designated proposition two should not mislead the Court in any fashion. Ballot position was determined by lot by the American Arbitration Association without regard to priority in time.

18. The Plaintiffs in this action and the International Secretary Treasurer and the International Counsel have all engaged in a campaign to prevent the referenda from going forward. They have made oral and written threats to the American Arbitration Association, to me and to my Executive Assistant, Captain Gene Laski. I respectfully request that this Court sign the order to show cause restraining the Plaintiffs and others acting in concert with them including the International Secretary Treasurer and the International Counsel from interference or threat of interference in any way with the processing, mailing and conduct of the referendum by the American Arbitration Association.

19. General Counsel of the Offshore Division, Jaffe Cohen Crystal & Mintz, have been orally advised that International Counsel will be submitting an order to show cause containing a temporary restraining order with respect to a separate referendum which I have directed the American Arbitration Association to submit to the membership concerning the separation of the funds

of the Offshore Division from the funds of the International. It has previously been established that I have the right to direct a referendum to the membership of the Offshore Division (see paragraphs 5-6 above). There is nothing in the International Constitution which requires the funds of the Offshore Division or any other division to be comingled with the funds of the International. The International Constitution does require certain payments to be made by subordinate bodies and this is set forth in Article VIII of the International Constitution. The amount which the Offshore Division is required to pay to the International is substantially below the amount collected by the Offshore Division pursuant to its By-Laws. It is clear that the Offshore Division has the right to adopt By-Laws providing for the handling of its own funds and that to do so is in no way inconsistent with the International Constitution. The By-Laws of the Offshore Division provide for the comingling of the funds of the Offshore Division with the funds of the International solely during a transition period which ended January 1, 1972 on the effective date of the By-Laws of the Offshore Division. Those By-Laws were adopted October 1, 1970, but were to be effective only as of January 1, 1972. Nonetheless, the Offshore Division funds continued to be comingled with the funds of the International subsequent to January 1, 1972, although there was no mandate under the Constitution of the International or the By-Laws of the Offshore Division for such comingling to continue. It is my belief that the welfare of the membership of the Offshore

Division will be protected and enhanced by a referendum permitting the membership to determine whether to continue such commingling of funds. There is absolutely no prohibition against such a referendum and I can only conclude that the attempt to restrain that referendum is politically motivated in concert with the attempt to restrain the referenda on dues reduction and restructuring. I am convinced that the membership of the Offshore Division is qualified to determine for itself the issues to be presented to them by all of the referenda and that there is no basis whatsoever for this Court to transfer with the right of free choice by the membership with respect to these issues. I respectfully request the assistance of the Court, however, in preventing others from interferring with the democratic processes of our union.

S/ FRANK T SCAVO
FRANK T. SCAVO

SWORN TO before me this
3rd day of February, 1977.

S/ ERNEST ALLEN COHEN
Notary Public

EXHIBIT "C" TO COHEN AFFIDAVIT - AFFIDAVIT OF COHEN IN SUPPORT OF DEFENDANT SCAVO'S MOTION FOR PRELIMINARY INJUNCTION IN CASE NO. 77 Civ. 510

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

GERALD L. JOHNSON, as International Executive Vice President of the International Organization of Masters, Mates and Pilots, AFL-CIO, and Assistant Executive Officer of the Offshore Division thereof, and individually as a member of the International Organization of Masters, Mates and Pilots and of the Offshore Division thereof, and

ROBERT J. LOWEN, as International Secretary-Treasurer of the International Organization of Masters, Mates and Pilots, AFL-CIO, and Financial Officer of the Offshore Division thereof, and individually as a member of the International Organization of Masters, Mates and Pilots and of the Offshore Division thereof,

Plaintiffs,

-against-

FRANK T. SCAVO, as International President of the International Organization of Masters, Mates and Pilots, AFL-CIO, and as Chief Executive Officer of the Offshore Division thereof, and

ROBERT COULSON, as President of the American Arbitration Association,

Defendants.

----------x

AFFIDAVIT IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION IN FAVOR OF DEFENDANT FRANK T. SCAVO

77 Civ. 510 LWP

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

ERNEST ALLEN COHEN, being duly sworn, deposes and says:

1. I am a member of the law firm of Jaffe Cohen Crystal & Mintz, who were designated General Counsel of the Offshore Division of the International Organization of Masters,

Mates and Pilots (hereafter "Offshore Division") pursuant to a retainer agreement duly executed by Frank T. Scavo as Executive Officer of the Offshore Division acting pursuant to Article VI, Section 1 of the By-Laws of the Offshore Division, a copy of which By-Laws is annexed as Exhibit "A" to the original of this affidavit.

2. Defendant, Frank T. Scavo, is the International President of the International Organization of Masters, Mates and Pilots (hereafter "International" or "Union") having been duly elected in an election duly certified by the American Arbitration Association as impartial ballot agency. Under the terms and provisions of the Constitution of the International particularly Article VI, Section 1(g) and Article IX, Section 8, the International President is also the Executive Officer of the Offshore and other fully formed Divisions. The Constitution, in its entirety, is annexed as Exhibit "B" to the original of this affidavit.

3. This affidavit is submitted on behalf of Defendant, Frank T. Scavo, in support of a motion for a preliminary injunction to prevent the Plaintiffs from utilizing their position as officers of the International in such a way as to violate basic and fundamental membership rights and authority vested in the Defendant, Frank T. Scavo, as International President and as Executive Officer of the Offshore Division. Such injunctive relief is absolutely essential at this time as a result of a constitutional crisis which has arisen in the International and the Offshore

Division in which the Plaintiffs have asserted a constitutional interpretation and have threatened to undertake a course of action which would immobilize the President and the International and the Offshore Division and which would deprive the membership of their fundamental constitutional rights in the International and the Offshore Division. It will be shown that the crisis to the International and to the Offshore Division would cause massive and irreparable harm were such relief not to be granted and that such harm in no way is compensable by money damages or any other action at law and that the Defendant, Frank T. Scavo, has a reasonable probability of success with respect to his counterclaim against the Plaintiffs for an injunction and for a declaratory judgment. Thus, all of the elements appropriate for the granting of a preliminary injunction will be shown to be present in this case.

3A. The constitutional crises which has arisen in the operations of the International and the Offshore Division threatens to create irreparable harm to the membership of the International and to the membership of the Offshore Division unless it is resolved forthwith so that the impasse between the President and the Plaintiffs, the Convention, the General Executive Board and the Offshore Division Executive Council can be resolved. The impasse is concerned with the interpretation of various provisions of the Constitution and the By-Laws insofar as they effect the powers

of the President to hire professional and administrative personnel and to present referenda to the membership of subordinate bodies. Until such issues are resolved, a question exists as to the authority of those appointed by the President in his capacity as Executive Officer of the Offshore Division to obtain access to vital documents and records in order to enable them to fulfill the responsibilities assigned to them by the President. Moreover, it appears that questions will be raised concerning status as before Courts, the Department of Labor, the National Labor Relations Board, various congressional committees and personnel, the maritime administration, the United States Coast Guard, representatives of employers, impartial ballot agencies and others. Moreover, a cloud has been raised with respect to the validity of referenda now pending and any further referenda which may be directed by the President pursuant to his authority under Article VI, Section 1(i) of the Constitution.

4. The factual context in which this crisis arises is that Captain Scavo ran for International President as a insurgent candidate against the established leadership of the Union pledged to a program of achieving economies in the expenditure of the union monies, reduction in membership dues and greater autonomy for the Offshore Division in the operations of its affairs. Captain Scavo was elected President but the previous secretary treasurer was reelected together with other individuals who had been part of the prior administration. Thus, when the President attempted to carry forward his program involving effectuating

economies through a drastic reclassification of ports, reducing membership dues by cutting the percentage of dues deducted from the gross amount of each vacation benefit received by Offshore Division members for work performed on contracted vessels by one-third, from six (6%) percent to four (4%) percent, and to achieve independent counsel and fiscal autonomy for the Offshore Division, the President was confronted with overwhelming opposition from other Union officials.

5. Although there is considerable dispute concerning the motives of each of the participants in the crisis, there can be no dispute that the crisis exists and that crisis can only be resolved by a prompt and decisive determination by the Court of the meaning of certain provisions of the Constitution and the By-Laws as to which the President and his opponents disagree. All parties recognize that the Union is one of overwhelming importance in the American economy and in the world system of commerce and transportation. The Union represents over ninety (90%) percent of all licensed deck officers in the American Merchant Marine and over ninety-five (95%) percent of pilots within its jurisdiction. Thus, the entire American Merchant Marine could be severely affected if the Union is unable to carry out its normal functions of representation of its members.

6. Moreover, no one can dispute that the provisions of the Constitution and By-Laws can only be amended (except in limited circumstances not here relevant) by referenda vote of all

members and that participants in the constitutional crisis constitute an infinitesimal proportion of the total membership of the Union and the Offshore Division. Thus, for example, there are 17 members of the Offshore Division Executive Council. The total membership of the Offshore Division is in excess of 5000. There are approximately 43 delegates to the Convention while the total membership of the International is in excess of 8000. There are 11 members of the General Executive Board out of a total of more than 8000 members of the International. There is considerable overlapping between the membership of the Convention, Offshore Division Executive Council and General Executive Board. All together, the combined membership of the three relevant bodies is far less than one (1%) percent of the Union membership. Moreover, this limited number of individuals in many instances consist of persons who have not engaged in ocean-going activities for many, many years despite the fact that the majority of the membership is consistently engaged in ocean-going activities each year.

7. In view of the fact that none of the participants in the consitutional crisis are free to amend the Constitution or the By-Laws and that all are bound to act in accordance with the Constitution and By-Laws, any resolutions passed which contradict the provisions of the Constitution or the By-Laws and any actions taken in contravention of the Constitution or the By-Laws are necessarily void and of no force and effect no matter how often such resolutions are repeated and no matter how many forms such resolutions may take. Thus, the business of the Convention

has found itself tied up in repeated resolutions and actions which are alternatively rejected by one side or the other as being voided because of the respective claims of constitutional interpretation.

8. The essential issues in dispute are really not very difficult or complex. The consequences of lack of agreement on interpretation of these provisions are drastic and extreme. The issues are essentially twofold:

A. Does the President have the right, acting in his capacity as Offshore Division Executive Officer, to hire administrative and professional personnel and, assuming that he has such power, does the Offshore Division Executive Council, the General Executive Board or the Convention have the authority to overrule such appointments absent a change in the By-Laws?

B. Does the International President have the right to direct a referendum vote to be held by the membership of a subordinate body on an issue which he believes affects the welfare of the membership of the subordinate body and, if so, does that power include the power to direct a referendum amending By-Laws of a subordinate body and does it include the power to direct a referendum where a referendum on the same subject matter has been submitted by membership petition? Assuming that the President has such power, can it be overruled by action of the Offshore Division Executive Council, the General Executive Board or the Convention?

9. It is the position of the President and it appears clear beyond cavil that the President has the sole and exclusive authority and responsibility acting as Executive Officer of the Offshore Division to employ administrative and professional personnel. Thus, Article VI of the By-Laws entitled "Duties of Officers" provides in Section 1 that the International President shall be the Executive Officer of the Offshore Division and shall "with the complete assistance of all members of the Offshore Division Executive Council, enforce the International Constitution and these By-Laws." The International President is then directed to enforce all provisions of Offshore Division collective bargaining agreements and to act as chairman of the negotiating committee and to seek to settle all disputes, interpretations, grievances or complaints arising over enforcement of the provisions of the collective bargaining agreements. The other International officers and members of the Offshore Division Executive Council and port personnel are mandated to "function under his direct supervision and orders". He is required to enforce the shipping rules and to provide for proper maintenance of all shipping records. In order to enable the President, acting as Executive Officer, to fulfill these responsibilities, the section contains the following language:

> "He shall employ such administrative and professional personnel as are needed to effectively operate the Offshore Division."

The term "he" clearly and indisputably applies to the International President acting in his capacity as Executive Officer of the Offshore Division.

10. It is interesting to note that the By-Laws in this respect differ considerably from the International Constitution insofar as they specify the authority of the International President to employ professional and administrative personnel for the International in contrast to the Offshore Division. Thus, Article VI of the Constitution entitled "Authority and Duties of International Officers and International Subcommittee" provides in Section 1 for the duties of the International President. The Constitution specifies "it shall be the duty of the International President and he is hereby authorized to:" and thereupon specifies various powers. Paragraph (m) of Section 1 of Article VI provides:

> "appoint such organizers, representatives, assistants, counsel, accountants and other professional personnel as he may require to assist him in the duties of his office and to fix their compensation, with the approval of the General Executive Board."

Thus, the International Constitution specifically compels the President to obtain the approval of the General Executive Board in connection with appointment of professional and administrative personnel at least with respect to the issue of fixing compensation, whereas, no such restriction exists in the similar provision of the Offshore Division By-Laws.

11. It would be possible to absolutely immobilize a chief executive from carrying out his responsibilities were he to be deprived of professional and administrative personnel of his own selection. There is absolutely no basis for superimposing a ratification process in the Offshore Division By-Laws where none is specified.

12. The opponents of the President appear to rely upon Article IX, Section 2, Paragraph (b) of the By-Laws to develop an authority to overrule the President in his hiring of professional and administrative personnel for the Offshore Division. The relevant paragraph states:

> "The Offshore Division Executive Council shall have the authority to consider and act on any and all matters affecting the Offshore Division."

It is obvious that such a general provision was not intended or could it have the effect of overruling and voiding all of the specific provisions of the By-Laws. Were that interpretation to be accepted, no other provision of the By-Laws would be necessary. The long standing and fundamental rule of interpretation that general provisions would not be deemed to supercede specific provisions compels this argument. Moreover, any argument which may be asserted that the Constitution does not permit divisions to obtain counsel independent of International counsel would involve superimposing language and concept on the International Constitution that clearly are not present. The International Constitution in Article IX, Section 14 does specifically prohibit subordinate bodies from employing counsel "chargeable to the Organization". The word "Organization" is defined in Article I, Section 1 as the International. The clear implication of Article IX, Section 14 is that counsel can be employed by subordinate bodies so long as the expenses are not "chargeable to the Organization". An interpretation giving effect to all language used in a provision must be used in preference

to an interpretation which would compel the Court to treat language as though it were not present. Were the Constitution to intend to bar subordinate bodies from employing independent counsel, the words "chargeable to the Organization" would be totally superfluous.

13. The argument is asserted, nonetheless, by the opponents of the President that the Convention has the power to overrule the appointment by the President acting as Executive Officer of the Offshore Division of professional and administrative personnel. The broadest authority and power is vested in the Convention pursuant to Article IV, Section 1 of the Constitution which designates the Convention as "the source of all true and legitimate authority over the Organization" and which sets forth that the Convention possesses "supreme and absolute power and overall channels leading thereto". Nonetheless, Article IV specifically provides that "the Convention does not have the power to alter or amend the Constitution except as provided in Article X hereof". Article X permits the amendment of the Constitution (except for provisions not here relevant) only upon approval by a majority vote of the membership voting in a secret referendum ballot. Thus, Article IV, Section 1, read as a whole can only be interpreted to mean that the Convention has supreme authority to the extent that it acts within the framework of the Constitution.

14. The Constitution in Article IX entitled "Subordinate Bodies" specifies the way in which By-Laws of subordinate bodies are adopted and amended. Thus, Article IX, Section 4, paragraph (a) directs each subordinate body to adopt By-Laws and provides:

> "Such By-Laws shall be adopted and amended <u>only</u> by a majority vote." (Emphasis supplied)

See also Article IX, Section 4, paragraph (c), subparagraph (i). Thus, the Convention is barred from amending the Constitution and the only constitutional way to amend By-Laws of subordinate bodies is by majority referendum vote. Therefore, the Convention is not free to act in contravention of either the Constitution or any validly adopted By-Law provisions.

15. In disregard of the authority of the President as above shown and in disregard of the provisions of the By-Laws and Constitution, the Offshore Division Executive Council and the Convention have adopted a series of resolutions, and it is to be anticipated that the General Executive Board will similarly adopt a series of resolutions aimed at depriving the President of having counsel or administrative assistance in carrying out his responsibilities as Executive Officer of the Offshore Division. Moreover, it appears that the General Executive Board will even take steps to deprive the International President of his secretary. It appears that the President's opponents believe that they can emasculate the office of the President of the union and

immobilize its occupant by financial and physical threats and pressures brought upon the President and those working pursuant to his appointment and under his authority. Your affiant was personally physically menaced by political opponents of the President, threatened with bodily harm for carrying out my professional responsibilities pursuant to the retainer agreement and was present when the President's secretary was pressured and harassed by the International Secretary-Treasurer under circumstances which appear clearly to be aimed at causing the President's secretary to resign. The facts concerning these incidents may be disputed but there is no dispute that resolutions have been adopted which would, if valid, have the effect of leaving the President without personnel to carry out the duties of his office. In addition to seeking to deprive the President as Executive Officer of the Offshore Division of counsel of his choice, the resolutions were aimed at imposing upon him counsel representing the President's political opponents before this very Court. The President made clear the fact that he had no confidence in the counsel sought to be imposed upon him. His views were absolutely disregarded. Moreover, the President in his capacity as Executive Officer of the Offshore Division, has be utilizing the assistance of Captain Gene Laski, an ocean-going member on leave of absence as master of a contract vessel. Captain Laski has represented the position of the Offshore Division in meetings with governmental officials in Washington

in connection with the safety of vessels and jurisdictional protections provided for the American Merchant Marine. He has assisted the President in the study of costs and demographic facts relating to reclassification of ports and Union personnel. The Offshore Division Executive Council and then the Convention itself voted that the President acted without authority in employing Captain Laski on behalf of the Offshore Division. Thereafter, an interesting event occurred. By a vote of 10 to 7 the Offshore Division Executive Council voted to reconsider its actions with regard to Captain Laski. The motion to reconsider was brought on by a resolution stating that it was made in view of the authority of the President as Executive Officer of the Offshore Division to employ administrative and professional personnel. Subsequently, after the body had voted to reconsider its prior action concerning Captain Laski, it voted once more for his discharge. The only intervening event was the President's circulation of his plan for reclassification of ports which will, if adopted, drastically reduce union payroll by more than $400,000.00 and thus, cover the costs of the dues reduction proposed by the President.

16. The focal point with respect to the other basic issue of constitutional interpretation involved in the current constitutional crisis, the issue of the power of the President to initiate referenda of Offshore Division members, is found in the Constitution rather than in the By-Laws.

17. Article VI, Section 1, paragraph (i) provides that it should be the duty of the International President and that he is authorized to "direct that a referendum vote or a vote by membership meeting be held by the membership of any subordinate body on any matter, issue or proposition when he believes that the welfare of the membership of the subordinate body will be protected or enhanced by such action." It is claimed by the opponents of the President that this authority is in conflict with provisions contained in the By-Laws relating to amendment. Article XVIII of the By-Laws sets forth proposed amendments "may" be submitted to to membership vote by a majority vote of the Offshore Division Executive Council or by a petition signed by 15% of the Division's members in good standing. In no way would it appear that Article XVIII purports by any of its language to specify the exclusive method for initiation of a referendum to amend the Offshore Division By-Laws. Thus, there would appear to be nothing whatsoever inconsistent between the power of the International President to direct a referendum to amend the By-Laws of any subordinate body in accordance with his powers under the Constitution and the provisions of the Offshore Division By-Laws authorizing a referendum to be initiated by membership petition or by a majority of the Offshore Division Executive Council. Even if one were to torture the language of the By-Laws to create such an inconsistency, it is clear that it would be the By-Laws' provision which would be invalid rather than the provision of the International Constitution. Thus,

Article IX of the International Constitution specifically provides in Section 4(a) that "any article in the By-Laws of any subordinate body conflicting with this Constitution is void and may not be enforced. No subordinate body may alter or amend any part of this Constitution". The standard rules of interpretation in favor of an interpretation upholding the validity of a provision rather than an interpretation resulting in the invalidity of the provision would appear to support the interpretation that the By-Laws provision with regard to initiation of referenda to amend the By-Laws should be interpreted as alternatives to those provided under the International Constitution.

18. Thus, the argument that the President cannot initiate a referendum of members of the Offshore Division would appear to have no justification whatsoever. The argument would appear to have been nothing more than an attempt to prevent the President from permitting to the membership of the Offshore Division to approve or disapprove the program that he was elected to office pledged to implement.

19. The clear language of Article VI, Section 1 paragraph (i) enabling the President to direct a referendum vote by the membership of any subordinate body "on any matter, issue or proposition" would appear to include amendment of By-Laws unless such general language is inconsistent with any specific language contained elsewhere in the Constitution. The simple fact is that there is no specific language with respect to amendment of By-Laws of subordinate bodies which in any way conflicts

with the general power given to the President. Thus, reference to amendment of By-Laws of subordinate bodies is contained in Article IX, Section 4(a) and 4(c) and the general power to initiate referenda is vested in the Executive Council of any subordinate body pursuant to Article IX, Section 16. None of such provisions, however, in any way conflict with the general power of the President pursuant to Article VI, Section 1(i) to direct referenda vote by membership of any subordinate body on any matter, issue or proposition.

20. It is conceded that the President may not direct a referendum vote to amend the International Constitution since the Constitution clearly provides in Article X for the exclusive method by which such amendments may be initiated. It is also conceded that the President may not initiate a referendum of the entire organization, but only of a subordinate body. The fact is that there is nothing inconsistent between the referenda initiated by the President and any provision of the International Constitution and, despite arguments made to the contrary, no such provision of the International Constitution has ever been cited by any of the President's political opponents.

21. It is also argued by the political opponents of the President that once a referendum is proposed by a petition by members of a subordinate body, the President may not act to initiate a referendum dealing with the same subject matter.

No constitutional authority whatsoever is presented for this unique interpretation. Instead the argument is made that the membership will become "confused". Suffice it to say that the membership of the Offshore Division is limited by its By-Laws to persons who possess "a valid United States Coast Guard Merchant Marine Officer's license, certificate or other evidence of professional capability". (Article II, Section 1(a)). The members of the Offshore Division are confronted on a regular basis with the necessity of making complex professional judgments involving the health and safety of their crew and of the personnel of other vessels and affecting millions of dollars worth of cargo and extremely costly vessels themselves. Certainly, such a membership will not be confused by a choice between a reclassification of ports proposal tied to a reduction from six (6%) percent to five (5%) percent in Union dues computed on the basis of vacation benefits and a proposal to effectuate practical economies tied to a reduction from six (6%) percent to four (4%) percent in Union dues computed on the basis of vacation benefits. Moreover, the President, after providing a full opportunity for consultation by the membership and by the Offshore Division Executive Council, has developed his proposal for reclassification of ports which he has directed be submitted to the membership in a separate ballot. Thus, the membership may wish a reduction in dues or they may wish a reduction in Union personnel without regard to whether or not dues are reduced.

22. It is clear that reclassification of ports is an on-going subject as to which the membership has great practical expertise and which requires constant re-appraisal based upon changes in economic,demographic and industrial patterns.

23. The President's opponents seem to be reduced to presenting the absurd argument that the alternative authorities by which referenda may be initiated are engaged in a "race" and that whoever gets their proposed referendum out first can bar all others from initiating a referendum on the same subject matter. There is absolutely no authority in either the Constitution or the By-Laws for such a position and it is ludicrous on its face. Under such circumstances, it is the membership petition that would always be barred since it is the membership petition that takes the longest time to process and verify. Such an interpretation would give the Union officials the power to cut off the right of the membership to petition for By-Laws changes. It is inherently undemocratic.

24. The referenda which are the subject matter of the present constitutional crises are particularly controversial because they involve the cut-back in substantial numbers of Union officials and the reduction of payroll for others. It is undisputable that over the past five years the number of contract vessels in active operation and the number of members of the Union requiring services has been drastically reduced. Thus, it is difficult to dispute the propriety for a cut-back along the lines urged by the President. It is

difficult to dispute, however, that those officials confronted with the prospect of the loss of their positions and those politically allied with them have a strong political and economic incentive to prevent the President from putting such initiative before the membership. The provision authorizing the President to direct a referendum would be a nullity if it could be overruled by the Union officials and their political allies directly involved in the subject matter of the referendum. It is an extremely beneficial provision to permit the President to go to the members of a subordinate body and put a proposition before them for their approval or disapproval, even though the President as an insurgent, is unable to obtain the concurrence of other Union officials. The Convention has no authority to read Article VI Section 1 paragraph (i) out of the Constitution and attempt to deprive the membership of the opportunity to determine its own fate by referendum vote initiated by the President. Obviously, were the Convention to be committed to the view that it was in the best interests of the membership to eliminate the President's right and authority to initiate a referendum, the Convention by a two-thirds pro rata vote has the authority to propose a constitutional amendment which would require approval by referendum. It cannot however, achieve a practical amendment of the Constitution by resolutions adopted in violation of existing constitutional safeguards.

25. The difficulties of achieving basic reforms by a successful Union insurgent are massive and pervasive. The membership, is entitled to have every safeguard and protection provided

under, the Union Constitution and By-Laws fully enforced so as to enable the successful insurgent and any other Union officer to carry forward his authority and responsibility in an effort to seek to fulfill the commitments and program which induced the membership to elect the insurgent candidate initially.

26. Your affiant has lived through a week of meetings of the Convention and the Offshore Division Executive Council and has seen and felt first hand the isolation of the President and his allies in these bodies, and the hostility and antagonism toward the President and his administrative and professional assistants and toward his allies by those whose jobs are threatened and by their political allies. Your affiant left the President on Sunday, February 13, following the voting of a two week recess of the Offshore Division Executive Council, over the opposition of the President, in order to avoid having the Offshore Division Executive Council come to grips with the reclassification issue before this Court considered the issues presented to it. The President has remained in San Diego presiding at meetings of the Convention and of the General Executive Board. Nevertheless, it is essential that the Constitutional crisis be settled and that this Court is requested and urged to grant a preliminary injunction to prevent the Plaintiffs from interfering in the valid and constitutional exercise by the President in his capacity as Executive Officer of the Offshore Division in employing professional and administrative personnel as are necessary to carry out his functions and to prevent the Plaintiffs from interfering with

the President acting pursuant to the Constitution in directing referenda to the membership of any subordinate body with respect to any issue which the President determines to be in their best interests. It is vital that the Court act without delay to interpret the Constitution and the By-Laws with respect to the points at issue, so that the Union can proceed with its affairs. The Plaintiffs must not be permitted to run roughshod over the constitutional protections of the membership or to deprive the membership of the opportunity to ultimately resolve the issues brought before them pursuant to the authority of the Constitution. Your affiant is confident that this Court will protect the basic rights of the membership as reflected in the By-Laws and the Constitution and that this Court will do so clearly, unequivocally and expeditiously so that a most significant Union can proceed with its most significant operations.

27. From all of the above, it is abundantly clear that, unless restrained, Plaintiffs will continue to engage in the acts specified above, that such actions will result in irreparable injury, loss and damage to Defendant, Frank T. Scavo, and to the membership of the Offshore Division and that the issuance of the preliminary injunction will not cause undue inconvenience or loss to Plaintiffs and will prevent irreparable loss and injury to Defendant, Frank T. Scavo, and to the membership of the Offshore Division.

Sworn to before me this
14th day of February, 1977.

ERNEST ALLEN COHEN

Notary Public

CORRECTED TRANSCRIPT

Copy sent to Corporation 3/25/77 Emil

1 UNITED STATES DISTRICT COURT

2 SOUTHERN DISTRICT OF NEW YORK

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4 GERALD L. JOHNSON, CHARLES A. HEMMING, ORION A. LARSON, et al., :

5 Plaintiffs, :

6 -against- : 77 Civ. ~~510~~ 789

7 FRANK T. SCAVO, as International President of the International Organization of Masters, Mates and Pilots, AFL-CIO, and as Chief Executive Officer of the Offshore Division thereof, and :

8 :

9 :

10 :

11 ROBERT COULSON, as President of the American Arbitration Association, :

12 Defendants. :

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15 March 11, 1977, 10 A.M.

16 Before:

17 Hon. Lawrence Pierce, District Judge.

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Appearances:

19

TABAK STEINMAN & MELLUSI, ESQS.,

20 Attorneys for Plaintiffs,
299 Broadway, suite 410,

21 New York, N.Y. 10007
By: Sheldon Tabak, Esq.,

22 Jack Steinman, Esq., of Counsel.

23

24

25

Appearances:

JAFFE COHEN CRYSTAL & MINTZ, ESQS.,
Attorneys for Defendants,
275 Seventh Avenue,
New York, N.Y. 10001
By: Ernest Cohen, Esq.,
David Jaffe, Esq.,
Allen Breslow, Esq., of Counsel.

MARVIN SCHWARTZ, ESQ.,
Attorney for the International and Offshore
Division of Masters, Mates and Pilots,
234 Waverly Place,
New York, N.Y., 10014,
By: Marvin Schwartz, Esq.,
Burton M. Epstein, Esq., of Counsel.

Also Present:

GERALD AKSEN, ESQ.,
Representing Elvira Robbins in
case number 844, and the American
Arbitration Association.

STUART PARKER, ESQ.,
Assistant U.S. Attorney.

THE COURT: We are proceeding with 77 Civ. 489, Johnson v. Scavo. The plaintiff Johnson is represented by Tabak Steinman Mellusi, and Mr. Tabak is present. Counsel?

MR. TABAK: Yes, sir. Jack Steinman is with me, your Honor.

THE COURT: A Mr. Steinman. All right. Appearing for the International Organization of Mates, Masters and Pilots is Mr. Marvin Schwartz from Schwartz & Epstein?

MR. SCHWARTZ: Just Marvin Schwartz. I am also appearing for the Offshore Division as you can tell from the papers. Your Honor, 844 was returnable today as well.

THE COURT: Let me take it a step at a time, please, slowly. It is complicated enough.

MR. SCHWARTZ: You are right.

THE COURT: Who is Mr. Epstein?

MR. EPSTEIN: I am here, your Honor. I am associated with Mr. Schwartz.

THE COURT: Now, appearing for the defendant Scavo is the firm of Jaffe Cohen Crystal & Mintz and present is Mr. Jaffe?

MR. JAFFE: I am Mr. Jaffe.

MR. COHEN: I am Mr. Cohen.

MR. BRESLOW: I am Mr. Breslow.

THE COURT: And there is someone here from the American Arbitration Association?

MR. AKSEN: Yes.

THE COURT: You are here as an observed at this point? You are here in connection with 489 as an observer?

MR. AKSEN: Right, your Honor.

THE COURT: Now, there are three matters involving the parties. One bears docket number 77 Civ. 489. One bears docket number 77-510 and one bears docket number 77 Civ. 844. We are proceeding today with 77 Civ. 489. Mr. Tabak made the suggestion when we last met, the hope being that we could unravel this maelstrom if we took them one at a time.

MR. COHEN: Your Honor, there is a temporary restraining order that you granted in 77 Civ. 844.

THE COURT: Don't introduce that. Strike that right now. We are going to take it a step at a time here, please. We are only proceeding with 77-489 at this time.

First of all, pursuant to Rule 65(a)2 this hearing will be consolidated with a trial on the merits. Does anyone have any particular objection they wish to voice

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about that at this time?

MR. SCHWARTZ: No, your Honor.

THE COURT: All right. Now, I would like to determine whether I can obtain from you, gentlemen, a stipulation as to some facts. First of all, that proposition number 1 was submitted by Gerald Johnson, the executive vice president of the International Organization of Mates, Masters and Pilots which we will hearafter refer to as the International Union, and that it was validly submitted pursuant to article 18 of the International Constitution.

MR. TABAK: The bylaws of the Offshore Division, sir. Your Honor, may I just approach you for one second?

THE COURT: Yes.

(Discussion off the record.)

THE COURT: Modifying that to read pursuant to article 18 of the bylaws of the Offshore Division. Is there a stipulation as to that?

MR. COHEN: Your Honor, there can be a partial stipulation. The question of that if in fact it was submitted and in fact it was transmitted by Mr. Johnson is not in dispute. The question as to the validity is a question which depends upon whether or not in fact 15 percent of members in good standing signed the document, and

that issue has never been resolved. We do not claim either that it is not or that it is our position. Our position is that that issue has never been determined.

THE COURT: All right.

MR. SCHWARTZ: May I just speak to that? I realize that the answer denied that. However, what I think you were just shown is what the defendant Scavo himself submitted to the American Arbitration Association and it was presently before the members, and that indicates that it is a valid petition because certainly anything other than that would be just a travesty of all kinds of justice. The very caption on the ballot says that it was properly submitted in accordance with article 18. The caption was done by Captain Scavo.

THE COURT: Mr. Cohen, my attention has been directed to your memorandum received on February 17, 1977, page 3, just below the mid point. This is your memorandum in opposition to application for preliminary injunction in 489. Third page below the mid point.

MR. COHEN: Does it say 489 third page?

THE COURT: Yes. "The other alternative which was presented by membership petition pursuant to the Offshore Division bylaws called for," et cetera, et cetera.

It would seem to suggest that there is no question

on the part of your client as to the validity of the petition.

MR. COHEN: Your Honor, I have page 3 of a memorandum in case 77 Civ. 489, and I am afraid I am not following you.

THE COURT: Count up nine lines from the bottom.

MR. COHEN: "Thus it would be appear clear that the referendum submitted"--

THE COURT: No. "The other alternative which was presented by membership petition."

Here. Look at mine.

MR. COHEN: Oh, this is in 510.

THE COURT: It also bears number 77 Civ. 489 handwritten.

MR. COHEN: I have that now, your Honor.

THE COURT: Do you see that sentence I am reading on page 3?

MR. COHEN: Yes. Your Honor, there is no question that a membership petition was presented. There is no question that the president elected without confirming the 15 percent to send to the membership for referendum that issue under his powers to submit referenda under the International Constitution under article 6, section 1(i) which does not require such a confirmation.

THE COURT: Let me ask you this. Do you stipulate that proposition number 1 submitted by Gerald Johnson as executive vice president of the International Union was validly submitted pursuant to article 18 of the bylaws of the Offshore Division?

MR. COHEN: Your Honor, we cannot stipulate to that because no confirmation was made as to the signatures.

THE COURT: An issue exists as to validity?

MR. COHEN: Correct.

THE COURT: You concede that it is 15 or more members, issue as to their standing and authorization, validity and all of that sort of thing?

MR. COHEN: All that we claim is that that issue has never been determined.

MR. SCHWARTZ: I hate to interfere because we are going to get spun off on that now.

THE COURT: I am not going to get spun off on it. I will give it to a magistrate.

MR. SCHWARTZ: The fact is that it was submitted and proposition 1 says it was submitted in accordance with that. That was drafted by Captain Scavo. We indicate in our brief that counsel for Scavo is being less than candid.

THE COURT: All counsel I believe have been less than candid. Nobody informed this court that Judge Motley had issued a petition relating in a case to some of the issues that are raised here.

MR. SCHWARTZ: I did several times. I have been the one who has been doing that. I indicated that at the first hearing.

THE COURT: Can we get a stipulation that proposition number 2 was Scavo's referenda -- "Amendments for fiscal autonomy" the subject of 77-510 and "Reclassification of ports," the subject of 77-844 will have the effect of amending the bylaws of the Offshore Division and/or the International Constitution?

MR. TABAK: Excuse me, your Honor. You left out one of Scavo's petitions and that is the one in 489 which is proposition number 2.

THE COURT: Why don't you just address the question that I did put?

MR. TABAK: All right. We are not related to those two, your Honor, so I have nothing to say with regard to them.

MR. COHEN: With respect to proposition number 2 in 489 and with respect to reclassification of ports which is dealt with in --

THE COURT: 844. And the other one was amendments for fiscal autonomy subject of 510.

MR. COHEN: With respect to those two propositions we contend that they would have the effect of amending the Offshore Division bylaws. We state that they would in no way amend the International Constitution. With respect to the fiscal autonomy proposition referendum in 77 Civ. 510 we state that that would neither amend the bylaws nor amend the International Constitution since the bylaws provisions that are referred to are bylaws provisions which are no longer applicable by their own terms. However, in the alternative in the event that those bylaws provisions were held to be still in force rather than merely transitional, then it would have the effect of amending those provisions.

We do not believe that it would amend the provisions, but in the alternative assuming that our view of the bylaws was not accepted by the court, that these were merely transitional provisions, under those circumstances it would have the effect of amending the bylaws.

MR. SCHWARTZ: I would like to be heard on that. With regard to proposition 2 which went out with the petition which is now out, that, of course, amends the Offshore Division bylaws and would not amend the Constitution.

With regard to what has been called for ease of reference the reclassification of ports, which is proposition 4 and the subject of 77 Civ. 844, that amends the Constitution and the bylaws. Most particularly it amends the bylaws but it also has a related effect on the Constitution. With regard to fiscal autonomy which is the subject of 510, if your Honor would note the proposition itself which has gone out that on its face says that it is an amendment.

Our position is it amends the bylaws clearly and amends the Constitution.

THE COURT: Is it conceded that proposition number 2, Scavo's, was submitted to the membership by Scavo pursuant to article 6, section 1, subdivision (i)?

MR. COHEN: Yes, your Honor.

THE COURT: Anybody deny that?

MR. TABAK: It is not a matter of denying it. That is what he says and we will stipulate that that was the subdivision he served it under.

MR. SCHWARTZ: Just so long as it is clear to you, your Honor, that we don't agree with the validity of it. It is just simply what authority he sought to invoke. We totally disagree he has that authority under that section. But that is the section we would agree that he

has sought to use.

THE COURT: Is it conceded that propositions number 1 and number 2 have been submitted to the union membership for their consideration?

MR. COHEN: Yes, your Honor.

MR. SCHWARTZ: Yes, your Honor.

MR. TABAK: Mr. Aksen can tell us that more clearly than anyone else.

THE COURT: Apparently it is. Is it conceded that the International convention held in February of this year, 1977, was convened pursuant to article 4, section 1, and the following of the International Constitution?

MR. COHEN: Yes, your Honor.

MR. SCHWARTZ: Yes, your Honor.

MR. TABAK: Yes, your Honor.

THE COURT: The answer is yes. Is it conceded that the delegates to the convention held in February of '77 were authorized delegates pursuant to article 4, section 4 of the International Constitution?

MR. TABAK: Plaintiff so concedes, your Honor.

MR. SCHWARTZ: Yes, your Honor.

MR. COHEN: Yes, your Honor.

THE COURT: Is it conceded that there was presented

to the delegates and adopted by the delegates agenda item 57, "Affirmation that International president does not have authority to initiate referenda to amend International Constitution or Offshore Division bylaws and declaring illegal and void such referenda"?

MR. TABAK: Plaintiff so stipulates, your Honor.

MR. SCHWARTZ: So stipulates.

MR. COHEN: It is conceded that it was presented to the convention. It was ruled out of order by the chair. The fact that it was presented and adopted is not in dispute. The fact of its validity is in dispute.

MR. SCHWARTZ: Just for the record, it was ruled out of order by the chair. The delegates, duly authorized delegates challenged the ruling of the chair. The ruling of the chair was rejected and then the motion came on before the convention, and it was adopted as you see in 57. It is true you had to do most of these things twice because the chair ruled them out of order.

THE COURT: Do you concede that is what occurred?

MR. COHEN: We concede those are the facts. We did not concede that the resolution that was adopted was before the convention properly adopted.

THE COURT: But you do concede that the delegates

rejected the rulings of the chair and proceeded to pass or adopt agenda item number 57?

MR. COHEN: That's correct, your Honor.

THE COURT: Is it conceded that there was presented to the delegates and the delegates adopted agenda item 85, "Offshore petition for reclassification of ports properly posed by a petition signed by the members i ordance with article 18, section 1 of the bylaws of the Offshore Division"?

MR. TABAK: Yes, sir.

MR. SCHWARTZ: Yes, your Honor.

MR. COHEN: Your Honor, to the same extent that we have stipulated with respect to the prior convention item, the same events occurred with regard to this item and the same position is asserted.

THE COURT: Is it conceded that agenda item number 53 was presented to and acted upon affirmatively? Agenda item 53, "Confirmation of ODEC action, re: legal counsel"?

MR. SCHWARTZ: Yes, your Honor.

MR. TABAK: I am not involved in this part of the action. I think that goes past 489, your Honor, and I won't make any comment.

MR. COHEN: To the same extent as the previous two stipulations, your Honor, these events occurred.

The legal validity of such events are the question in issue.

THE COURT: Is it conceded that agenda item 54 was presented to those delegates? "Prohibition of payment for legal fees to the firm of Jaffe Cohen Crystal & Mintz confirming ODEC action"?

MR. SCHWARTZ: Yes, your Honor, the same events took place.

MR. TABAK: We take the same position.

MR. COHEN: Same position.

THE COURT: Is it conceded that there was submitted to those delegates agenda item 55, "Confirmation of ODEC action authorizing Marvin Schwartz and Burton Epstein to continue rendering legal services to the Offshore Division"?

MR. SCHWARTZ: Yes, the same events took place.

MR. TABAK: Plaintiff has the same position.

MR. COHEN: Same position.

THE COURT: Is it conceded that those resolutions which were approved by the delegates were acted upon pursuant to article 4 of the International Constitution?

MR. SCHWARTZ: Yes, your Honor.

MR. TABAK: Plaintiff agrees and stipulates to that, your Honor.

MR. COHEN: Our position is that they were not

acted upon in accordance with the authority vested under article 4 and they constituted a violation of the provisions of article 4 particularly the provisions of article 4, section 1, the last sentence: "The convention does not have the power to alter or amend the Constitution except as provided in article 10."

THE COURT: Is it conceded that the reclassification of ports, subject matter of 77-510, has been mailed to the union membership for consideration?

MR. SCHWARTZ: 510 isn't the reclassification of ports, your Honor. That is the fiscal autonomy.

THE COURT: All right. Is it conceded that that has been mailed?

MR. SCHWARTZ: Yes, your Honor. 510, fiscal autonomy, has been mailed.

MR. COHEN: Yes, your Honor.

THE COURT: All right, we have two or three disputed issues here that are immediately apparent. Mr. Tabak, I guess the initiative is with you. I am referring to agenda item 57 and agenda item 85 and also whether the approved resolutions were acted upon pursuant to article 4 of the International Constitution. Mr. Cohen says that they were not. You and Mr. Schwartz say they were. Also, proposition 2 is in 489, is it not?

MR. TABAK: Yes, sir.

THE COURT: So, we have the question as to whether proposition 2 will have the effect of amending the by-laws of the Offshore Division and/or International Constitution. That is four items.

MR. COHEN: Your Honor, it is conceded that proposition 2 would have the effect of amending the Offshore Division bylaws. I believe it is also conceded that it would not have the effect of amending the International Constitution.

THE COURT: Proposition 2 amendments for fiscal autonomy?

MR. COHEN: No. Proposition 2 is the dues reduction.

MR. TABAK: Dues reduction from the 6 percent to 4 percent. It is a reduction of 2 percent as opposed to proposition 1 which in part said 6 percent to 5 percent, a reduction of 1 percent.

THE COURT: All right.

MR. SCHWARTZ: I am not sure I understand. So, just for clarification, with regard to the resolutions 57 and 85 -- as I understand it we have a concession that they were passed by the convention, by the delegates.

THE COURT: The legal validity of their action is

1 challenged by Mr. Cohen.

2 MR. SCHWARTZ: I don't know if that is a factual

3 issue. It is a legal issue as to whether or not --

4 THE COURT: It seems to me whether the action

5 was valid is going to turn on who did what or who failed

6 to do that.

7 MR. SCHWARTZ: No, not so. I think as was

8 indicated in our memorandum, there is no doubt about the

9 regularity of the passing of these resolutions, and there

10 is no doubt that it is passed in accordance with the

11 authorities that they have in the Constitution under the

12 section which speaks to conventions. The only question

13 is whether or not that, in fact, would have the effect of

14 amending a constitution or bylaws which we deal with

15 extensively in the referendum, and we say it just doesn't.

16 As we have indicated to your Honor the way this thing

17 has developed and this so-called constitutional crisis,

18 the situation is this. The president says he has the

19 unlimited authority to interpret the Constitution and

20 the by-laws, and therefore if somebody does something

21 contrary to his interpretation that constitutes an amendment

22 of the Constitution and the bylaws. We have carefully drawn

23 that out as best as we could in the referendum. The

24 only issue that is left with regard to 57 and 85 is whether

25

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2 that in effect amends the bylaws. We would suggest all
3 it does is confirm that the president in the instances
4 of being able to initiate referendum, that the section
5 in the Constitution that he relies on and is being
6 relied on for the first time historically by anybody and
7 being used contrary to the way it was used before, that the
8 convention rejected the idea that the Constitution could
9 so use it. That is the essence of what the actual
10 resolution itself says.
11 With regard to item 85 that simply talks to
12 sending out the petition by itself. Now, that really doesn't
13 even approach anything involving amending a Constitution
14 or bylaws even under Scavo's theories that anybody who
15 disagrees with his interpretation would be doing that.
16 85 simply said that the petition should go out by itself
17 on a yes or no basis, and the reason that it did is
18 because of the Offshore Division bylaws requirement that
19 amendments be adopted by a majority vote were as if you
20 send them out on a choice, you run a danger of having a
21 plurality vote which leads to all kinds of relevant problems.
22 The convention has said in the instance of 57 with regard
23 to that portion of the Constitution which the president
24 seeks to use for the first time to send out a referendum
25 which would amend the bylaws of the Offshore Division, they

reject that and say that clearly is not correct. And with regard to 85 they just simply say that is a valid petition. It is in the actual resolution itself and should go out by itself.

MR. TABAK: I wasn't present but just for your edication there were 42 delegates present and number 57 was voted 39 to 3. So, when they say this was done irregularly -- I mean out of 42 delegates 39 told Captain Scavo you are wrong. I don't know how much more proof you need than that. It wasn't by one vote.

MR. COHEN: Your Honor, this is a situation that is analogous to where a governor, for example, would be of one political persuasion and the overwhelming majority of the legislature might be of another political persuasion. The question is what is the extent of the administrative authority that the Constitution vests in that governor and can the legislative even by a unanimous vote take away our constitutionally vested powers? I agree with Mr. Schwartz to the extent that the convention followed certain procedures and took certain actions. I don't think the facts of what actually occurred in San Diego are in dispute. The question is does the convention without following the process of amending the International Constitution which requires a membership referendum have the

power to restrict authority specifically vested in the president under the language of that Constitution?

THE COURT: Which section?

MR. COHEN: We are speaking of --

MR. TABAK: Do you have a Constitution?

THE COURT: Yes.

MR. COHEN: The only relevant section as to our argument is the section that sets forth the authority of the president. If the president has authority to do certain things the convention cannot tell him he can't do it. If he doesn't have the power to do them then the convention has every right to tell him that he can't do them. The real question is does the Constitution vest these powers in a president who is a minority or insurgent president whose political persuasion is different than that of the majority of the convention delegates?

THE COURT: Give me the article you are talking about.

MR. COHEN: All right. The powers of the president are set forth in article 6 and it begins in section 1 saying:

"Duties of International president. It shall be the duty of the International president and he is hereby authorized to"-- and then it sets forth a wide variety of

1 authority. If the convention wishes to deprive the
2 president of some of that authority it has every right by a
3 two-thirds vote to propose a referendum to the membership
4 which can have the effect of depriving the president of
5 any or all of his authority if a majority of the membership
6 so elects to do. That is under article 10. But if the
7 convention simply by resolution says Mr. President, you
8 cannot do that which you are specifically authorized
9 to do under the Constitution, then it is our position
10 that the convention has no authority to pass such a resolution
11 because it would have the effect of amending the Constitution,
12 not because the president says it would have the effect
13 of amending the Constitution but because the language of
14 the Constitution is such that it has delegated this
15 authority.
16 There would be no requirement for any provision
17 other than the convention provision if the convention
18 could overturn the other articles of the Constitution.
19 If the convention could say by majority vote we would eliminate
20 the office of International president, that would clearly
21 be in violation of the Constitution. They have done something
22 a bit less. They say we want to eliminate the office but
23 we will eliminate the powers specifically delegated to
24 you under that Constitution.
25

MR. SCHWARTZ: Let's look at that section now. This, of course, is an extremely essential item. We have the actual body of 57 itself, the resolution that was passed is helpful, the language. But let me just say this to bring this thing back into focus. What is happening is that Scavo was relying on a section which he says means something and the convention says it doesn't mean what you mean.

The convention is not changing a provision. The convention is ruling with regard to the interpretation of a provision.

THE COURT: To wit.

MR. SCHWARTZ: To wit. And that is that that section was never designed to give you this wholesale authority.

THE COURT: Section 6, 1(i).

MR. SCHWARTZ: We discussed that in great detail in the memorandum. I want to point out one thing. In the Constitution it talks about having "the authority and power of this organization" -- in article 4 --the convention is the source of all true and legitimate authority over the organization," having extreme and absolute power -- we concede that -- and to establish and settle any appeals. Now, on page 27 of the memorandum that was submitted to you

I think is set forth -- and you can see that it started back almost 30 years ago -- a line of cases, and I submitted an extra sheet the other day bringing up to date some of the cases as late as '73 and '74. What these cases in effect say is that if the interpretation made by the convention which has the authority to interpret what the meaning of a provision should be, if that is a reasonable interpretation the courts will abide by it. We would submit and we would hope that on examination of the provision and examination of the discussion that is contained in the memorandum you would come to the conclusion that the convention which has the authority to act in those regards would have made a reasonable interpretation. What we have here is a provision which has never been used the way it is purported to be used now.

We have a provision which has been used the way we say it should be used which is with regard to getting a sense of the membership, to get a polling of the membership, and we have a provision which up to as recently as a few moments ago even Scavo himself never thought in terms of using. At a meeting of the Offshore Division executive council about ten days ago Scavo spoke to this. As he put it at some point "Lo and behold" there was in this provision that he relies on which is under his duties,

article 6, section 1, subsection (i). And he decided that he would use that to put out an alternative proposition. Your Honor, I don't want to spend more than one sentence to dispel something that completely is threaded through this whole matter. We are not dealing in a situation where the president is being resisted by people who are trying to thwart the membership.

Insofar as that situation is concerned Johnson was a political ally and sought the candidacy of Scavo and ran on the same ticket. Virgil Valentine, who is another one of the people involved in the petition proposed Captain Scavo. What the issue is and the way the issue developed is that 15 percent petition was presented and then because Scavo did not like it as he has candidly expressed it at meetings, in transcripts, he decided he wanted to have another procedure to follow. There was no other procedure that had ever been used other than the petition or the Offshore Division executive council so he decided to go ahead and see if he could take subsection (i), which has been presented to you, and bend it for the purposes that he has sought to use it in proposition 2, 3 and 4. Now, in the brief at some length we set forth under point 1 under (b) at page 15 -- these subdivisions talk about article 6, section 1 of the Constitution: "Plainly does not

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2 encompass referenda to amend the bylaws of the Offshore

3 Division."

4 We go through that at that point in some length.

5 We don't have an instance here of someone seeking to take

6 away power. We are trying to avoid the interpretation

7 of a provision which was never designed for the power it is

8 trying to be used for now. People who understood and know

9 and understand the Constitution passed a reasonable

10 interpretation. That is the convention. As the cases say

11 on page 27 these things have been accepted by the court

12 and been accepted as binding and not require going behind it.

13 If it was an arbitrary ruling that would be it.

14 MR. TABAK: Your Honor, please, I would

15 just like to take Scavo's position one minute and present

16 it to you as I see it. Scavo says that under the aupices

17 of article 6, subdivision (i), I may send a referendum

18 to the membership. Certain people say you can't do that.

19 So now you go to a convention and the convention meets

20 and says that you, Captain Scavo, can't do that and Captain

21 Scavo now has built his strawman and he continues it to the

22 next step by saying, you can't tell me I can't do that

23 because by telling me that you are amending the Constitution.

24 So, he has interpreted the Constitution.He has told the

25 convention what the Constitution says and what it means and

if you mean different than what I mean, you are amending the Constitution.

THE COURT What does (i) mean?

MR. TABAK: (i) means that if there is a labor negotiation he may send out a referendum to determine what has to be done with regard to whether we are going to picket, we are not going to picket, we are going to ask for more money or not, but it certainly does not say anything about sending out a referendum to the membership to amend the Constitution or to amend the bylaws.

THE COURT: What about the specific reference in article 10 to International dues, minimums, assessments? These dues matters, were they limited to the Offshore Division or did they have implications as far as it was the International president?

MR. TABAK: Only limited to the Offshore Division. The reduction of the 6 to the 5 or the 6 to the 4 percent only relates to the Offshore Division.

MR. SCHWARTZ: You are talking about the Constitution I think.

THE COURT: Does it have implications in terms of the International beyond the Offshore Division?

MR. TABAK: It does not.

MR. SCHWARTZ: That has been conceded. I said that in the brief too. If I may, the explanation as to what it means and how it has been used is set forth in the memorandum. Let me just find it. It starts on 15 starting at item number 1: "The basis Scavo cites for his alleged authority to conduct his own amendment referendum is article 6, section 1 of the Constitution which provides..."

The provision on its face doesn't talk about a secret majority referendum. It talks about situations where you would have a membership meeting vote. There is no reference made to an impartial balloting agency. We talk on page 17 as to how it has been used in the past such as taking a poll among the members of a subordinate body on the advisibility of affiliating with an organization, getting a sense of the members' feelings on contract issues. Just such a poll was conducted in 1973 among Offshore Division members to determine whether or not there was substantial support for a renegotiation of the 40-day rule. This is all actual practice in addition to just the normal construction of what you would have in a contract where you have specific methods for amending a constitution and where you clearly would not take a provision such as this which is questionable at the very

1 least for such a use and say that is a third method of
2 conducting a referendum which would have the result of
3 amending bylaws.That provision talks about subordinate
4 bodies. In effect it would mean he could in any instance
5 with any of the subordinate bodies, whether the pilots or any
6 of the inland people, any time somebody wanted to amend
7 their bylaws which have specific methods of doing it, he
8 could step in and do what he did in this instance and
9 in effect frustrate the possibility of getting a majority.
10 And then there are other items which have been
11 indicated with some of the correspondence with the Department
12 of Labor where they raise the question of whether or not
13 this was done in such a way to promote his own candidacy
14 in the election that is coming up. So, that provision
15 that he relies on has been passed on as not having been
16 designed to give him the authority he says, never having
17 been interpreted that way before and never having been
18 suggested in any of the conversations or exchanges of
19 discussion which took place between Scavo and my office
20 through myself and Mr. Epstein when he raised a whole
21 series of questions with regard to the 15 percent petition.
22 We had indicated that it should go out on the basis of
23 a yes or a no, and we had indicated that the signatures
24 were subject to a spot check. It seems to me that the
25

answer to the issue is an examination and an analysis of the section itself, that subdivision, which we do very carefully in the memorandum, taking the action of the convention and deciding whether or not their action is or isn't reasonable. If it is reasonable then as the courts have said that is the end of it. Those are the cases on page 27.

MR. COHEN: Mr. Schwartz unfortunately has two fatal weaknesses in the argument that he makes. He makes the argument that the convention was merely interpreting the Constitution and not amending it, and that if their interpretation is reasonable whether it is the same that you, your Honor, would reach or not you are bound by it. The problem is that the Constitution itself specifies the power of its interpretation, authorizes and gives that power to interpret the Constitution solely to the president in specific language. I refer your Honor to article 6, section 1, paragraph (d).

If you read it from the beginning of section 1: "It shall be the duty of the International president and he is here authorized to:" And then (d) says"Decide on all points of law, interpretations of the Constitution and/or grievances submitted to him."

Now, on questions of grievances clearly the

convention is given superseding authority. But the rule of interpretation that I am sure that all parties will concede is that the specific takes precedent over the general. Here you ave only one specific reference to the interpretation of the Constitution and that is under the duties of the International president.

Under the duties of the convention all kinds of authorities is vested in them but nowhere is the authority to interpret the Constitution vested in them. So, under the standard line of cases that Mr. Schwartz has cited, if a reasonable interpretation is made by that party vested with the right to make that interpretation under the Constitution, yes, I believe your Honor is bound by it if it is reasonable.

The other problem with the argument that he makes is that the interpretation by the convention just isn't reasonable. I refer your Honor to pages 8 and 9 of our brief. As I understand it although this was given to the clerk it may not have been transmitted to your Honor because I have the original here.

MR. SCHWARTZ: I had understood all papers were supposed to have been in last Monday night or Tuesday morning.

MR. TABAK: February 28th.

MR. COHEN: We got his brief March 7th. If I may give you this the Talton v. Belnick case, for example, in the Seventh Circuit makes clear that where you have language such as "any," and there is no specific contrary provision in the Constitution, "any" is given its standard meaning which is all. Subsection (i): "direct that a referendum vote or a vote by membership meeting be held by the membership of any subordinate body on any matter, issue or proposition."

Clearly the amendment of bylaws is a matter, issue or proposition which can be adopted by the majority of a subordinate body by referendum. There is nothing in the Constitution in any way that is inconsistent with that general authority. The Constitution does provide that a referendum has to be adopted by majority vote and that is clear. The Constitution also provides that a bylaws amendment may be initiated by the executive council of any subordinate body and that is clear. So, the Constitution does speak of amendment of bylaws but in no way does it speak inconsistently with the power to initiate an amendment of bylaws by the presidential directed referendum. The concept that the bylaws of the Offshore Division are inconsistent with the Constitution in this respect falls of its own petard. To begin with

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2 article 18 never says the exclusive method for initiating
3 a referendum shall be one or two. It does not say
4 that other methods are not available. At the bottom
5 of this is to look at the rationale of what we are
6 dealing with. What is being argued by the president's
7 political opponents is that the power under article
8 (i) does not enable the president to adopt bylaws changes
9 but to go to the membership and say, "Membership, do you
10 want these bylaws changes?" What they are looking to do
11 is to cut off the president's ability to communicate
12 with his own membership to get his membership's views.
13 It is not what these 40 people decide. It is
14 what the 5,000 members of the Offshore Division decide
15 that should govern this union. It is not what the president
16 decides, it is what the 5,000 people out there whose lives
17 depend on the kind of protection that they get from their
18 union, what decisions they make. There has been a great
19 deal of argumentation which would lead one to believe
20 that the membership out there will be confused by all this.
21 It will be conceded that the membership of the Offshore
22 Division consists of Coast Guard licensed deck officers in
23 charge of the responsibility for life and property in
24 millions of dollars on a daily or monthly basis. These
25 are men who are trained to make decisions, decisions that are

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complex, decisions that are difficult. The president says that he wants the membership to be able to make this decision. Why? Why should the membership not be able to decide vital issues that affect their own livelihood, their own rights, the kind of ports that will be available to service them. Your Honor, at the bottom line in what we are talking about is a question of whether the president under powers that are provided for him and that say specifically that he can --and let me read this language again because this is what it is all about:

"Direct that a referendum vote or a vote by membership meeting be held by the membership of any subordinated body on any matter, issue or proposition."

Bear in mind what these words say. When he, the president, not the convention, he, the president believes that the welfare of the membership of the subordinate body will be protected and enhanced by such action, does that provision turn the president into a dictator who can determine what the rules should be of this organization, or does it simply give the president the right to go forward and say to the membership, make a decision on this issue? Your Honor, it is conceded the president was against proposition 1. The president made a speech at the convention in which he stated that proposition 1 made no

sense geographically. He was against proposition 1, but he didn't say don't let proposition 1 go to the membership. He said membership, here is proposition 1. Here is proposition 2 and vote on this. He recommended because he has a duty to lead and in the Shelton v. O'Callahan case which also involved this union it was clearly stated that union officers have a duty to lead, have a duty to communicate with their membership.

He came forward and communicated with his membership and said you can vote for proposition 1 but I don't think it is a good proposition for you. He came forward with proposition 2, and then in order to detail the specifics of how he would go about achieving this 2 percent reduction he set forth in the reclassification of ports the specific port by port designation of how this would work.

Now, what is at stake here on this proposition is not merely who has the power to do what, it is a question of whether the union membership can govern there on affairs or whether a handful, half of 1 percent of the membership of the union or three-quarters of 1 percent of the Offshore Division membership can block the president from exercising powers specifically granted to him under the Constitution.

THE COURT: That handful you are talking about, are they not the elected delegates?

MR. COHEN: Absolutely, your Honor. Just as the Congress of the United States is the elected body in this country. But if the Congress of the United States told the president of the United States that he could not function, that he could not do certain things that are specifically delegated to him under the Constitution of the United States it would be invalid.

THE COURT: How do you interpret this paragraph in article 4 that the convention is "The source of all true and legitimate authority over the organization and possesses as such supreme and absolute power over same," et cetera, but at the bottom it states, "The convention does not have the power to alter or amend the Constitution except as provided," et cetera. What do you suppose those words mean, that the convention is "The source of all true and legitimate authority and possesses supreme and absolute power over the same?"

MR. COHEN: It means the convention can do anything that is not otherwise provided in the Constitution. The convention has the right to do anything except to amend the Constitution or the bylaws.

THE COURT: What you have just said is what the

language of the section says. That they have the power to do every and anything except amend the Constitution. It says that. Now, what we have here is the president taking action which he says is borne of power which he has from article 6, section 1, subdivision (i), and then he draws it through upon subdivision (d) and that says that he can direct certain referendum votes which he believes would be in the best interest of the union.

It just so happens that this happens to occur at a period of time that precedes a convention. When the convention delegates do assemble, the issue is presented to them as to what the president has undertaken to do pursuant to the power he officially has. And the delegates apparently duly assembled, certified and so forth say, wait a minute. No, we don't agree with you. That is not the kind of referendum that we believe it is within your power to conduct. So Captain Scavo states, well, you can't restrict my authority because it is clearly stated in the Constitution in article 6.

Mr. Tabak and Mr. Schwartz say what they can do is interpret what the Constitution says and that is different from amending the Constitution. They say they weren't amending it. They were not amending the bylaws or the Constitution. They were doing that which is within

their capacity, to wit, interpreting it. Again, you have fallen back on (d) saying that (d) in article 6 says that the president has the power to decide all points of law but then in turn we get back to the authority of the convention in article 4 which says that they are supreme and absolute except they can't amend the Constitution.

MR. SCHWARTZ: I would like to say this. I have had a great deal to do with some of the Supreme Court cases which talk about the democracy in unions and I have been on the receiving end in some of them, in some of the decisions before Judge Motley and the Court of Appeals. There is a wonderful comment in the lead case Wirtz v. Motel and Hotel Workers case which is a 1968 U.S. decision.

"Congress designed Title 4 to curb the possibility of abuse by benevolet as well as malevolent entrenched leaderships."

I don't think we were too far fetched at the end of our brief that one couldn't resist drawing the analogy to the case involving Nixon.

The situation there was that we can't destroy the office of the president. We can't take it away. I am going to defend his position to the very end. I tried as clearly as I could, as briefly as I could to put into a

simple paragraph what his position is and how he arrives at this. He states, "I am going to take any of the provisions of the Constitution and the bylaws and I am going to interpret them and I don't think they should be interpreted in such a away as to denegrate the office of the president."

THE COURT: Let me interrupt here and ask Mr. Cohen if he can envision a situation in which Captain Scavo, any president whoever he happens to be, undertakes to interpret an article in the Constitution. Let's say it is an article that pertains to his own powers. You can envision a situation where there is no indication of an effort to amend the Constitution, right?

MR. COHEN: Yes.

THE COURT: And given any situation like that the president has the power to -- pursuant to that subdivision (d) -- to decide all points of law. So he acts accordingly. He acts under an authority vested in him under article 6. He acts under the authority to decide all points of law. It is clearly not a case where an amendment to the Constitution is involved. Who can second guess him?

MR. COHEN: The courts.

THE COURT: Only the courts? What about the convention?

MR. COHEN: Either illustration, either the president could say I interpreted the Constitution and do it in some totally irrational way or the convention can say we are not amending the Constitution. We are only interpreting it and do it in such a unreasonable way so as to destroy the constitutional --

THE COURT: Given the example I cite there who can second guess the president? More specifically can the president in the situation I mentioned? First, do you concede he can be second guesseed?

MR. COHEN: Yes. We concede jurisdiction and we urge you to make a decision.

THE COURT: Not by the court. I am interested in whether or not the president having undertaken pursuant to his power as defined in the Constitution in article 6 does undertake to do something. He recognizes that there are issues requiring interpretation. He makes his own interpretation. It is apparent that it is not something that adds up to an amendment to the Constitution. Given that construction, can he be second guessed by the convention?

MR. COHEN: Under this Constitution, no, your Honor.

THE COURT: He cannot?

MR. COHEN: Can I expound about that, please?

THE COURT: I think you had better because I think that is somewhat important.

MR. COHEN: I think it is a basic question. I have seen many union constitutions and under those constitutions an initial authority is vested in a president to interpret constitutions, and subsequently the constitution invests in general executive boards or in conventions or in other entities the power of appeal from interpretations of the constitution. Under those circumstances there would be no question that if he had specific duties of interpreting the constitution -- I am saying the specific language that follows on deciding on all points of law his interpretation of the constitution. If the membership of this body had chosen to vest the specific authority in the convention they would have had every priority to do so had they adopted such a constitution. If they decided to vest it in a general executive board, they would have had every right to do so had they adopted that in specific language in their constitution. But this membership took a different view.

They are a membership of seamen, licensed deck officers who are used to having a captain. This membership said the captain will make the decisions. The president will make the decision. Maybe they were wrong but that is

their decision. They vested specific authority for the interpretation of the constitution in the president. However, that doesn't end it because we all acknowledge, I am sure, that the constitution is a contract between the members of the union. If any party to that contract breaches it he is answerable. If the president interprets the constitution improperly your Honor should, could, has the power to tell him you have abused the constitution.

THE COURT: I am not really inquiring as to what power the court has yet. I am inquiring as to what power the membership, the convention, the general executive board has. What about section 3 of article 7 which defines the duties and authority of the general executive board and says that the general executive board has certain powers but it is second to the convention in legislative and policy making authority. That is, in the exercise it is second to the convention.

MR. COHEN: It says that they shall decide on all questions of law, and in that instance it is clear that a decision on a question of law as opposed to a decision on interpretation of the constitution vests in the first instance in the president, in the second instance above him in the general executive board, and thirdly in the convention because they have been given that power. A very

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2 careful distinction has been made of section 1(d)

3 of article 6: "Decide on all points of law, inter-

4 pretations of the constitution."

5 The only place in this constitution where you

6 will find the language, interpretations of the constitution

7 is under the powers of the president.

8 THE COURT: What do you understand the words

9 "decide on all questions of law" to mean?

10 MR. COHEN: When the union is confronted

11 with a legal question other than a question of interpretation

12 of the constitution the general executive board can

13 determine what that is. And if the general executive

14 board disagrees with the president the general executive

15 board's powers are in all instances second to the

16 convention if the convention decides the convention has

17 the power to do it.

18 Now, if they are wrong on an interpretation, then

19 the only resort is to the courts. However, on an inter-

20 pretation of the constitution if the president is wrong the

21 only resort is to the courts. And, again, we all know

22 this is an aphorism, it is a principle, it is hornbook

23 law that specific provisions govern other general provisions.

24 Interpretations of law if that was all that was used

25 would include interpretations of the constitution. But where

1 smh 44

2 interpretation of the constitution is used separately

3 and only in regard to section (d) then we have a specific

4 provision and an attempt in a general provision to deal with

5 things other than that.

6 THE COURT: What about the fact that they do say

7 under (d) "Decide on all points of law, interpretations

8 of the constitution," et cetera whereas under 73 it refers

9 only to the words "Decide on all questions of law"?

10 MR. SCHWARTZ: Let me say that you have to read

11 the rest of (d) because (d) very carefully is talking

12 about disputes that arise between subordinate bodies. If

13 you look at the rest of (d) you will see that.

14 THE COURT: Do you concede that point?

15 MR. COHEN: No.

16 MR. SCHWARTZ: Look how the second sentence

17 reads, "When the International president makes a decision

18 or interpretation and/or orders a subordinate body to observe

19 the laws, rules and regulations and the subordinate

20 body refuses, the subordinate body shall be subject to

21 suspension or revocation of its charter."

22 The specific and general applies only when there

23 is a conflict in provisions. Let me just say this.

24 If any union was ever structured this way and if anybody

25 ever had this kind of authority under any set of circumstances

you would have one of the most basically defunct ones from the point of view from democracy that any union could have.

THE COURT: Do you want to address the democracy question, Mr. Cohen. It has been spoken of several times. What is your view about that? Give the spirit and intent as is reflected in whatever statutes are applicable, the growth of union movement in the United States to hold the excesses which have existed, the efforts to deal with excesses to democracies, to address the whole question of avoiding tyranny in the structure of union leadership, what about that? Is that not lurking here? Does it not have to be addressed in taking up these questions?

MR. COHEN: It is lurking but it is lurking from a different perspective than it may appear. What is at stake here is a very unusual union structure. What you have is a membership, a substantial portion of which at any given time -- and all parties will concede this-- are at the four corners of the earth. They are engaged in ocean going vessels and they may be sent any place in the world at any given time. They are confronted in this situation with a question of whether they will be allowed to vote or not be allowed to vote on something that they are expert in. The real issue on reclassification of ports is

what type of structure of service will exist throughout the country for these members.

THE COURT: What about the dues aspect? What is the real issue there?

MR. COHEN: It is $1,250,000, your Honor. Let me respond to that. Captain Scavo has -- and I don't want to get into the political aspects but I think this limited fact should be relevant -- Captain Scavo historically in the union has opposed what he has labeled as waste and extravagance. Maybe he is right and maybe he is wrong, but the membership elected him as a president on a platform saying that he would cut waste and extravagance in the union. Over the course of his administration he has done demographic studies. He has attempted to come forward with a structure that would save $481,000 a year. We have given you the documentation as to how he arrived at it.

THE COURT: How often are elections held?

MR. COHEN: Every three years.

THE COURT: We are nearing the end?

MR. COHEN: Your Honor, the problem is that unless this referendum goes through before the year begins the union will be locked into the existing structure for another three years.

THE COURT: Who are the candidates for president?

MR. COHEN: There are no candidates. It is not known.

MR. SCHWARTZ: We are a couple of months away. Your Honor, the Secretary of Labor has commented about the fact that the 2 percent has an effect on the candidacy and they object to it. I sent a copy of that letter up to your chambers. They say, "my petition is based on the fact that you make reference only to your own referedum proposal for reduction of dues but fail to mention that the referendum included a separate proposal for a dues reduction by members. The fact that you mention only that portion of the previous memorandum originated by you personally may benefit your candidate in an election." Johnson also proposed a decrease in dues. He did it through a petition. There were a number of people that have a petition and the fact that he is named on the petition in this case -- he is one of about somewhat less than a thousand people. That is a different kind of a procedure. Let me go back, your Honor. You stop at the convention reading about the review authority. I have never since I have been associated with the union ever heard anybody suggest this kind of a reading for this kind of a constitution. You say in one place that a person has the right to interpret whatever it is. Then you say that the convention is the

source of all true and legitimate authority. These things are read in conjunction with one another. Otherwise, what would happen is that you would have to repeat in this kind of a section every single thing that you want to review.

THE COURT: I am going to take a few minutes and try to mull over this.

MR. SCHWARTZ: All the things we raise are in the memorandum.

THE COURT: There is no fact evidence to be presented here I gather?

MR. TABAK: As to the one or two issues that haven't been stipulated you might want to take some fact questions. But I think that your Honor's suggestion of mulling it over and telling us what is not clear and what evidence you want, that would simplify matters.

MR. SCHWARTZ: There is one critical issue. In the memorandum I point out the problem with the reclassification of ports. We have gone over that at the meeting. There are a lot of defects with the language. There was some changes as to what was meant. For example, they now claim that you can wind up with the Offshore Division executive council appointing all these people instead of electing half and then appointing half when their term expires.

It is not clear who appoints them. Scavo says that he sets their salaries and if the council doesn't agree then he can reset them. It is not clear who appoints them. There are a number of problems and this is one of the very reasons we have never done it this way. In the memorandum under point A "The necessity of following the orderly procedure, and in my subsequent affidavit there are a number of basic defects with 844 that will only cause confusion that must be changed.

MR. COHEN: We have submitted this to the AAA.

THE COURT: You mean that aspect of it?

MR. SCHWARTZ: Not the language of it.

MR. COHEN: Your Honor, I am willing to introduce Miss Robbins and I have told her, "Miss Robbins, you are the election expert. If there is any lack of clarity please advise us and we will work to achieve that clarity."

THE COURT: We will take a 30-minute break.

MR. COHEN: The construction was adopted in 1970 so when Mr. Schwartz says we have done it before --

THE COURT: Wait. Let's break until 1:30.

MR. SCHWARTZ: Thank you, your Honor.

MR. COHEN: Thank you,your Honor.

(Recess to 1:30 P.M.)

AFTERNOON SESSION

2:10 P.M.

THE COURT: Good afternoon. There is a government attorney present who I think should make a statement in connection with the matters we are concerned with here, that is Assistant United States Attorney Stuart Parker who has some knowledge about other proceedings, to wit, the ones that were before Judge Motley.

Mr. Parker, are you present?

MR. PARKER: Yes.

THE COURT: Could we hear from you before proceeding further?

MR. PARKER: Yes, your Honor.

THE COURT: You were here this morning and heard what took place.

MR. PARKER: Yes, I was. In regard to the matter before your Honor concerning the construction of the union bylaws and constitution, the Secretary of Labor believes that that is an internal union matter which its supervision does not touch at this point in time. However, in regard to the Secretary's supervision of the union's next scheduled election there are a few points that I think should be made, as your Honor is aware the union's 1971 election was voided by order of Judge Motley and Judge Motley

ruled that that election would be rerun under the Secretary's supervision. That case went to the Court of Appeals and Judge Motley's judgment was affirmed with the modification, and the modification was this: She had ordered that the union's election again I believe it would have under her orders have begun in the summer of 1976 and finished at the end of that year. The Court of Appeals said that the supervised election would be held at the time of the union's next scheduled election starting I believe,the process starts I believe in May of this year. That was the only modification. The Secretary's interest can be boiled down to this, your Honor: Our duty is to supervise, that is to see that the election be run lawfully and fairly and that it conclude when it is supposed to conclude.

Now in order to do that it is necessary for the Secretary to review matters such as referenda, before they go out not for the purpose of determining who the union gives the power to to send out the referendum but to make sure that one, there is not language in the referendum that is stacked in favor of a prospective candidate, in other words, campaigning so the act is not violated in the sense that the union treasury is paying for the furtherance of a particular candidate's campaign.

Secondly, the Secretary has to be keyed into this process because of the matter of timing. The Secretary is under a duty to see that this election goes off promptly and without exercising his supervisory authority, it is difficult for him to do that.

Therefore, your Honor, the position that we have here is one, we have no comments on the merits of the dispute but we would say this, that in making whatever ruling you decide to make that you should keep in mind the crucial importance of the Secretary's task in keeping an eye on what the union is doing, reviewing whatever referendum are sent out. By this review of course, if there is a problem it can be spotted before the referendum goes out, the union leadership can be consulted and if there is some campaigning in it, it can be cleared up before the referendum goes out or if agreement can't be reached well,then,it can go to Judge Motley on that issue for resolution.

Then of course on timing itself.

It may be necessary,for example, to have a shorter period for circulation of the referendum in order to stay on the election schedule than the union has utilized in the past.

So, in conclusion then, your Honor, we would just

request that you keep the Secretary's supervisory role in regard to what goes out, if anything, in mind in reaching whatever determination you should make. Thank you.

THE COURT: Mr. Tabak, you have the burden of proof in 489.

MR. TABAK: Yes.

THE COURT: Given what has been stipulated to thus far, what other evidence do you wish to present, if any?

MR. TABAK: May I just say one thing before I answer your question. When we originally filed 489 with the Clerk's office we asked that the case be referred to Judge Motley. And because we couldn't say it actually related to the prior case they would not refer it to Judge Motley. If the court papers are checked that will show, and it's been crossed out on the court papers. I wanted you to know that it was not brought without that in mind. We knew that there was a case pending, but this one didn't relate directly to that, and the court won't accept it that way. Moving on from there we have gone through the findings of fact that we have submitted to your Honor. I think that the only issue that was left in our 14 findings of fact, the only one substantive one is the fact that whether or not the petition submitted by the membership was in fact a valid petition and was signed by 15 percent of the

1 membership. I think that is the only one in essence that
2 hasn't been stipulated to. I think in essence all the
3 others have been stipulated to. With regard to that, your
4 Honor, I refer you to the findings of fact which we just
5 received from Jaffe Cohen Crystal & Mintz,
6 their number 11,I think I would accept that finding of
7 fact which in essence says the other alternative which was
8 presented by membership petition pursuant to the Offshore
9 Division bylaws called for adjustment of that portion
10 of membership dues as are calculated based upon vacation
11 benefits from 6 percent to 5 percent.
12 In conjunction with the plan which would speci-
13 fically, and it goes on. It talks about the reclassification.
14 They are talking about proposition number 1 obviously.
15 They say that it was presented by membership petition.
16 So in fact they are admitting it. If your Honor feels
17 that more proof is necessary with regard to that, we will
18 ask that Captain Scavo take the stand and we will cross-
19 examine him with your Honor's permission. I am sure that
20 at the end of that you will be convinced that it was
21 properly, it was 15 percent that signed it. It was
22 accepted as such and sent out as such. And if it wasn't
23 sent out as such he had every obligation not to mislead
24 the membership by telling them it was the petition of 15
25

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2 percent of the membership.

3 MR. COHEN: Your Honor, we have never questioned

4 that there was a petition that was submitted and that the

5 petition on its face bore the names of 15 percent of the

6 membership. The issue is quite different. The issue

7 is whether those signatures that appeared on the instrument

8 in fact represented valid signatures, and whether the

9 names of the individuals whose signature appeared actually

10 constituted 15 percent of the members in good standing.

11 We concede that a petition in fact containing

12 what purported to be the signatures of 15 percent of the

13 members was presented. Our only issue was that we specifically

14 requested the secretary-treasurer to confirm those signatures,

15 when we determined from the opinion of, when the president

16 determined that this was an extremely difficult process;

17 rather than hold up the petition on the basis of the

18 difficulty of confirming its validity or nonvalidity the

19 president elected under his power to submit this as a

20 proposition to the membership because he believed that were

21 a membership petition was presented and obviously represented

22 a substantial percentage of the membership, whether or not

23 it validly complied with the provisions of the bylaws

24 he had the authority to send it out and designated as something

25 that he was sending out as a result of a membership petition.

MR. TABAK: In essence, your Honor, I don't know what Mr. Cohen has just said really. He spoke in --

THE COURT: To what extent is it pivotal here?

MR. TABAK: They are making it pivotal by saying that the petition is not valid.

THE COURT: Assume that it is not.

MR. TABAK: Assume that it is not, then I don't know how it could be sent out if it was not valid, your Honor.

THE COURT: I am trying to relate it to the issues here. If it is not valid its relationship here is specifically that.

MR. TABAK: Specifically that it should never have been sent out in the first place.

THE COURT: It was. It was thereafter approved by the convention as well, was it not?

MR. TABAK: It was, yes.

THE COURT: To what extent need we get bogged down with whether it was signed by the people whose names appear there?

MR. TABAK: I don't feel we have to. If your Honor is convinced that we don't, then I don't think we should.

THE COURT: To what extent is it pivotal here, Mr. Cohen?

MR. COHEN: Your Honor, it is the position of

Captain Scavo is that there are three alternative means by which a petition can go forward, one is 15 percent of the Offshore Division executive -- of the membership of the Offshore Division, a second alternative is the majority of the Offshore Division executive council and the third provision is by the International president sending it out under article 6, section 1(i), of the International Constitution. Of course there was doubt as to whether this petition requested under the 15 percent membership petition provision, the president sent it out under his powers under article 6, section 1(i), of the constitution clearly indicating that he was sending it out because it had been submitted to him by a membership petition.

THE COURT: Some other membership petition you mean?

MR. COHEN: By a membership petition.

THE COURT: Not this membership petition that proposition --

MR. COHEN: The Johnson petition may or may not be valid.

THE COURT: Let me catch up with you. The Johnson proposition called for reclassification of ports, did it not, decreased dues by 1 percent. That's not what Scavo said, is that right, he sent out something called, for

example, decrease of dues by 2 percent.

MR. COHEN: No. He sent out one as well as 2, he sent out to the membership, he said, listen, this is what I got from a member petition, this is what I think, this is my suggestion, vote for either the one I got from the member petition or vote for my suggestion.

THE COURT: Essentially what happened was he didn't challenge proposition number 1, the Johnson proposition. He accepted it and sent it out and he sent his own out but using a different source of authority, correct.

MR. COHEN: No. He sent them both out under his source of authority.

THE COURT: I am trying to say, he is in no position now to say they are invalid.

MR. COHEN: This termination was, that it was unnecessary to determine whether it was valid or not because he had the authority to send it out even if it was invalid.

THE COURT: He does not through you stand here today saying that proposition number 1 was invalid, it never should have been sent in the first place.

MR. COHEN: If he has the power under article 6, section 1(i), he doesn't claim that proposition 1 was invalid. If he doesn't have the power under article 6, section 1(i), then he must for the first time get to the issue of the

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2 validity because that was the authority that he used in

3 sending out proposition 1.

4 THE COURT: Now, to the extent that the convention

5 took up the issue, and acted upon it, would you say, by

6 the way of adoption or ratification.

7 MR. TABAK: I would say by both, your Honor.

8 THE COURT: What do you consider the implications

9 of that to be?

10 MR. COHEN: The convention never dealt with the

11 question of whether signatures were valid or invalid.

12 THE COURT: They waived it. They have the

13 opportunity to do that as well. They didn't. They took it

14 as though it were valid and they took action with respect

15 to it which I believe was ratification or adoption or

16 whatever you want to call it, is that not so?

17 MR. COHEN: Your Honor, we are getting back to

18 what I think takes us to a more basic question. That is,

19 what is the power of the convention vis-a-vis provisions

20 of the constitution and provisions of the bylaws. If the

21 bylaws provide three, two mechanisms for initiation of

22 referendum and the constitution provides a third method

23 for initiation of referendum and the president had sent

24 out a referendum utilizing the third method, sent out

25 two referendums, utilizing the third method,

if the third method is valid there

is no question that the convention had a right to ratify or do anything they wanted. If the president doesn't have the power, so I believe he does, so I believe this is, we are pursuing shadows but assuming that he didn't have the power, then we must go back to the basic question, was proposition 1 validly executed. There has been information that a number of the signatures that appeared on the petition were not valid signatures. The president didn't need to pursue that issue because even if it was signed by 2 percent of the membership he still had the right to send it out.

MR. TABAK: He didn't, your Honor. Please.

THE COURT: He didn't.

MR. TABAK: Under this caption.

THE COURT: He didn't send it out without having relied upon the means by which it came into his possession in the first place. He wasn't going to send out proposition number 1 but for the fact that it had come to him purportedly with 15 percent of the signatures.

MR. COHEN: That's right.

THE COURT: In fact his move was to send his own proposition out and he did so along with proposition 1.

MR. COHEN: That's right.

THE COURT: So that if it was left to him, if he had his druthers at that point, isn't it reasonable to assume

that he was not going to send proposition 1 out?

MR. COHEN: Your Honor, not only is it not reasonable but I was there so I can tell you, his thinking was that if a substantial percentage of the membership wanted any question to be put before them he will utilize his power to enable that membership to have that interest voted. It was not a question that he was going to block proposition 1. He intended to let the membership make a choice.

THE COURT: He sent them both and your position is he sent them pursuant to that --

MR. COHEN: Article 6, section 1(i).

THE COURT: Then the matters came before the convention.

MR. COHEN: That is correct, your Honor.

THE COURT: The convention voted proposition 1 up, as I understand it and they voted proposition 2 down, is that correct?

MR. TABAK: That is correct, your Honor.

THE COURT: Your quarrel with that is that by undertaking to do that they attempted to do something by way of amending the constitution bylaws and they didn't have, or they didn't proceed properly if that's what they wanted to do.

MR. COHEN: They could only do it with the consent of the membership because it involved an amendment of the constitution. Your Honor, right before we broke you put a question to me and I thought about it during the recess. I wonder if I might comment on that.

That was the question of the union democracy and the historical problem of protection against tyranny. And the efforts of the Landrum-Griffin Act, Labor and Management Reporting and Disclosure Act to deal with that problem, and your Honor, I think that the basic learning that the congressional investigations put forward implies very, very strongly that one should interpret any provisions relating to referendum of membership as broadly and liberally as possible to permit access to referendum because the surest portection against tyranny is to let the membership of the union decide its own issues.

I must tell you, your Honor, that we have, I am somewhat confused by the questions that were put to me that if Captain Scavo was against proposition 1, wouldn't he have tried his best not to send it out, because Captain Scavo in keeping with the fundamental concept of membership democracy would have sent it out because he believed that the membership should have a choice. That was a position that he has consistently taken with regard to these type of

issues. I think the safest interpretation of any constitution provision of a union is in favor of membership access, of access to the members for referendum because that's the surest way of being able to say to a tyranny of one or 40, we chose to run our affairs in this way. That's why the referendum should be permitted.

THE COURT: May I raise then another question that has bothered me since we met before lunch.

You have cited not just 6, 1(i), but 6, 1(d) and it sort of falls into this same ballpark as the other aspects of the democracy issue. The implication of your argument is that the president given the interpretation that you urge of the constitution, particularly these sections, the president under 6, 1(i), has certain decision making power vis-a-vis referendum. Your position is that that is unlimited, your opponent's position is that by custom, and by the wish of the convention et cetera, it is considered to be, and Mr. Schwartz says by intent, it is considered to be limited. He has the power but they say it is limited. You say it is unlimited.

Then I say to you, how do you conclude that it is unlimited. You say first of all, it doesn't have any words that restrict it. Secondly, you refer me to 6, 1(d), and say in any event the president is given the power to decide

all points of law, interpretations of the constitution, et cetera. In effect placing into the hands of the power, first decision making authority, unlimited decision making authority, and then saying and in the event that there is some question about it legally the president will review the decision which he made and will decide whether he was right or wrong. Isn't that in rhetorical form? I ask you if you agree with it.

MR. COHEN: Excuse me, your Honor. I would appreciate the opportunity to respond even though it may have been put in rhetorical form.

There are very severe limitations on what the power under article 6, section 1(i) exists, and that is that all it gives to the president is the power to tell the members to choose, it does not give him the power to choose. It does not give him the power to decide what ports should have fulltime port agents and which should have appointed port agents. It doesn't give him the power to change the bylaws.

THE COURT: Isn't the power to shape the agenda, the power to control -- everybody knows if you are chairman of anything, if you are a judge the very agenda that you present determines the course and the direciton of the argument that is going to be presented.

MR. SCHWARTZ: And the referendum.

MR. COHEN: That is the implication of electing a chairman. The fact is that--

THE COURT: The president.

MR. COHEN: Yes. Who was supposed to chair all the and prepare the agendas. Your Honor, the thing is that the president has only a limited power of referendum. It is an additional power of referendum because the constitution itself gives to the executive council of each subdivision also the unrestricted power to send out a referendum. So if the president chooses to send out a referendum, he can send one out. But the executive council of the Offshore Division similarly could send one out. So what you wind up with is the most liberal access to the membership.

The president cannot shape it so as to overcome the access of others but others cannot shape it so as to overcome the access of the president.

THE COURT: Did Gerald Johnson have any particular relationship to the Offshore Division that was separate from his relationship to any other division?

MR. COHEN: Yes. He is a member of the Offshore Division as is Captain Scavo.

MR.SCHWARTZ: He is more than that. He is the assistant executive officer of the Offshore Division.

THE COURT: He also is what?

MR. SCHWARTZ: Vice president.

THE COURT: The executive vice president.

MR. COHEN: Your Honor, that is not a difference. He is by virtue of his office as vice president, International vice president, he is assistant executive officer of all the divisions just as Captain Scavo by virtue of his office as president is executive officer of all the divisions. It is not a separate relationship.

THE COURT: Could you take a minute, maybe not too long and tell me something about it, just very briefly the history of the union with reference to the divisions, to what extent, or do I assume correctly that historically there was a time when you had five separate organizations.

MR. SCHWARTZ: What you had your Honor, you had locals up until -- the traditional local in a national setup. In 1970 they formed a divisional setup. As the courts have now said, that just made them big locals. It made them a bigger local. That was the issue we had there.

THE COURT: Once that happened to what extent was there a desire, a desire expressed one way or another to preserve certain aspects of the sui generis nature of each division, if at all.

MR. SCHWARTZ: The desire was is that the

divisions, actually the plan was, it was a way stop on coming up to an International. The idea was, the various divisions would operate through the president, the assistant, the vice president, and the financial officer.

THE COURT: Of the International?

MR. SCHWARTZ: Yes. For the fully formed division. Actually, although what the plan was that all of these things would be reviewed in the case of the president acting as the executive officer of the Offshore Division would be reviewed through the Offshore Division executive council, those actions that he did in that way and the actions he did in the Pilots Division would be reviewed by the Pilots Division executive council. Then as is the traditional one, which is really the same thing even before when they had locals, all the appeals from all the locals would come up to the general executive board and then all the appeals come up to the convention. I think that is in a way what we tried to say, your Honor. If you have any other situation then you literally takeout huge chunks of things from any possible review and then you literally by the device you have indicated first the use of subsection (i), of article 6, and subsection (d), the interpretation, you begin to have the kind of situation, for example, that has developed and we haven't gotten to this, it is an interpretation situation where

there is no constitution question at all, for example, with regard to the selection of counsel. No one can argue that that is a situation which involved a change in the in the bylaws or anything like that. There the argument is, even though the interpreting provision that's in the constitution does not relate to the bylaws interpreting the bylaws still they have the same kind of argument made by Scavo, that he can ignore the Offshore Division, General Council, and the International convention all by that device. Which is that I say that I have the power to interpret and anybody who disagrees with me is trying to amend the bylaws of the constitution.

MR. COHEN: Your Honor, again, during the recess I have thinking upon this question that you asked about how do you protect union membership against the kind of historical tyranny that Congress was concerned with. In one way it is clearly to give the broadest access of every level of the union to membership referendum. Not exclusively the president, the president here was arguing, listen, I am the only one that can send out a referendum. That would be a very autocratic situation. He is saying I too can send out a referendum, you elected me to exert leadership. Let me put before you my views and then vote them up or down.

THE COURT: What about the 15 percent provision in the Offshore Division bylaws?

MR. COHEN: Your Honor, the 15 percent provision is an alternative.

THE COURT: Yes, but to use an argument which you effectively used earlier today, the 15 percent provision is at least specific. And more than that, it would have required 15 percent of the membership of the Offshore Division so that if the referendum was something that was of interest to at least that number of people or that percentage of people in the Offshore Division, you had the 15 percent which are said to have supported Johnson's proposition number 1, and if you compare that with the president's proposition number 2, that submission, you have even if it comes from some other members beyond himself, we don't know how many, or was it 15 percent or were they all Offshore Division. Why isn't the provision of the by-laws, the Offshore Division, more in keeping with this concept of democracy and representation, with respect to that division or the membership of that division.

MR. SCHWARTZ: Traditionally that's why it is put in there.

THE COURT: That is of interest. I have been trying to fill in the gaps.

MR. SCHWARTZ: It is a traditional position that you put in to make sure that you don't get locked into some kind of setup. It is the traditional kind of concept that is in state and government constitutions. You have a situation where you can use the petition. Your Honor, you keep, I think what is particularly of interest, if you look at the petition you will see the extent to which the people who became involved with the petition went through in explaining what they wanted to do, what it was, in terms of the reclassification of the ports and doing other items that required an amendment.

If you look at proposition 2 which is simply the 2 percent deduction, all it is is what we would call an end of round 1, which means he said I am going to give you 2 percent reduction in dues without reducing the services. That's all it says. That's the whole thing. It says without reducing services, without doing anything that will affect the efficiency of the organization or division, I think I have made a study and we can afford to reduce 2 percent. Of course none of that was ever suggested until he saw the 15 percent.

MR. TABAK: May I say something please, your Honor.

Mr. Cohen alludes to the fact that proposition

1 rsh

2 number 1 was sent out by Captain Scavo under his

3 authority under section 6. I ask him -- the constitution,

4 yes. I ask him why then didn't he so inform the membership

5 of that.

6 THE COURT: You are talking about the itemization

7 at the top.

8 MR. TABAK: Yes. He didn't inform them of that.

9 Proposition number 1, it says these amendments to the

10 by laws of the Offshore Division were proposed by a petition

11 signed by at least 15 percent of the divisions members

12 in good standing, in compliance with article 18, section of the

13 bylaws of the Offshore Division.

14 Before he answers the question I would first like

15 to point out one more thing to your Honor, that Captain

16 Scavo in sending out the second petition knew something

17 which I think your Honor should know, that the referendum

18 under article 18 must win by a majority. So in order to

19 delude that proposition number 1, if you send out proposition

20 number 2, you may be able to defeat it by something

21 that you couldn't do otherwise. So he doesn't say -- of

22 course you get a plurality which would be more likely than

23 a majority with two propositions. So, what Mr. Cohen has

24 not said in fairness to your Honor is that although he is

25 sending out everything he doesn't like proposition number 1,

we don't even know if he likes proposition number 2. But he is sending it out anyway.

MR. COHEN: Your Honor, there are three questions put to me. May I deal with them one at a time please.

Your Honor, on the question of whether or not I like proposition number 1, or 2, I think that's the essence of what we are talking about. It is not what we like but the membership. What we are asking is that the membership of the Offshore Division which knows what it likes be permitted to exert its authority on that issue. That is what is at stake here. Can the members receive before it, have put before it a referendum not only by 15 percent petition, not only by the majority of the Offshore Division executive council, but also by the president. That is a question of constitutional interpretation. And, I suggest to your Honor that there is no question that the constitution is the superior instrument to the bylaws, because the constitution provides for the adoption of bylaws and in article 9, it speaks of subordinate bodies and section 4 it says each subordinate body shall adopt bylaws or rules governing all aspects of its operations not in conflict with this constitution. Such bylaws shall be adopted and amended only by a majority

1 rsh

2 referendum vote.

3 Any article in the bylaws of any subordinate

4 body conflicting with this constitution is void and may not

5 be in force.

6 Now, the key issue here is that you start with the

7 constitution, if there is a general provision in the

8 constitution that is in conflict with a specific provision

9 in the constitution -- the specific provision of the

10 constitution governs. If there is a general provision of

11 the constitution, that is in conflict with a specific

12 provision of the bylaws, the general provision of the

13 constitution governs.

14 With regard to the bylaws, the bylaws here

15 are not in conflict with the constitution because they

16 do not use the mandatory, they use the permissive. They say

17 proposed amendments may be submitted to such membership

18 vote by either a majority vote or by the petition. In other

19 words, they use --

20 THE COURT: Excuse me. In this instance was it

21 by vote?

22 MR. COHEN: No. A majority of the Offshore

23 Division executive council has never voted to send out

24 a referendum on this issue.

25 THE COURT: It is strictly by the 15 percent.

MR. COHEN: Yes.There is a third alternative provided under the constitution. If this conflicts with the constitution, if the bylaws conflict with the constitution and seek to deprive the president of his power than it is the by-laws that failed and not the constitution.

THE COURT: Yes. But the reason we have the United States Supreme Court interpreting what the United States Constitution means rather than just reading what it says, which all of us can do, is because it doesn't always quite mean what everybody thinks it means. At least you get opposing views as to what simple language seems to say and seems to mean. Isn't that really the case here?

MR. COHEN: Absolutely, your Honor.

THE COURT: All right. If there is nothing more to be presented, let me take Chambers and take it under advisement.

MR. COHEN: On the point that you just raised about constitutional interpretation, I think we are in a very different situation in interpreting the United States Constitution by the United States Supreme Court, and in interpreting a union constitution. Because the less specific the language is treated by the courts in a union constitution the more room there is for tyranny of

a small group against the interest of the membership.

THE COURT: Let me digest that.

MR. SCHWARTZ: The small group is the 42 delegates,duly elected delegates.

THE COURT: Except that it is very difficult to amend the U.S. Constitution. This group, how often does the convention meet, every three years or what?

MR. SCHWARTZ: More than that.

MR. COHEN: They can meet when they choose to meet.

THE COURT: You only have, you have the provisions for amending the constitution in article 10, is that right?

MR. COHEN: Yes.

THE COURT: It is much easier to amend the constitution, if some court interprets it some way, it is much easier for them to organize themselves.

MR. COHEN: No. Your Honor, unfortunately the amendment of the International constitution is not easy. The amendment of the bylaws is. The amendment of the constitution is very difficult. Two-thirds of the convention delegates must vote in favor of an amendment.

THE COURT: Of the delegates.

MR. COHEN: Yes. Must vote in favor of sending out a --

THE COURT: Of the 42?

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MR. COHEN: Yes.

THE COURT: Must vote of sending it out to the general membership.

MR. COHEN: Yes.

THE COURT: Then what percentage of the general membership.

MR. COHEN: A majority. But the difference on the bylaws is that the bylaws can be sent out in any one of three ways. We are most anxious that the membership at least of the Offshore Division be entitled to deal with its own bylaws, and to vote its will regarding these issues, no matter how it is brought to their attention as long as it is within the general framework of the constitution.

MR. TABAK: Your Honor, when I asked two questions to Mr. Cohen before, and then he said he had three questions to answer, I don't believe he has ever answered one question with regard to proposition number 1, why if he knows it was sent out with that particular caption if in fact it was sent out under Scavo's claimed authority under article 6 of the constitution.

THE COURT: Well, you have got it.

MR. COHEN: Your Honor, I would like to answer it.I'm sorry, I didn't mean to avoid it. The problem is that if President Scavo had stated that this is what

I am sending out, then he would be overcoming the wishes of the petition if in fact it was valid. What he was attempting to do is get it before the membership so they could vote in keeping with the conception of open membership control of their own affairs.

MR. SCHWARTZ: May I say something, your Honor: I having participated in some of that, I would draw an issue with that statement. I am a little concerned about something more important in terms of drafting a constitution, and a set of bylaws. With regard to this issue, that is specific in general, I think it's been badly abused in argumen in this instance, because otherwise I want to give you one specific example.

Looking at the convention, I mean the convention article 4 of the constitution, where you have this broad language, if what Mr. Cohen says is true, then every time you want to be sure that you have not left out something you no longer can say that all things which involve, as issues here, all appeals, all things like that, all this general language that traditionally you use to take care of the kind of problems that we have been talking about certainly at least those that involve interpretations of a provision or grievance or things of that sort, then argument would be that each time you come to someone who

has a general review authority,you would have to enumerate specifically all these different things because if you just say that they have general jurisdiction on appeal, then you are going to be in the position of having somebody say, there is a specific instance that has been referred to and therefore the specific takes over the general. That's not true. Because generally speaking all appellate jurisdiction talks and is phrased in general terms from specific things that happen in a court or body below. That's what the difficulty is with that, it seems to me.

THE COURT: All right. I gather that Mr. Tabak has nothing further to present.

MR. TABAK: I have one thing to say, your Honor. That is only with regard to our findings of fact 13 and 14, which bring to your attention the fact that there will be an election in June and that time is of the essence. I understand that traditionally these have been 90-day referendums.

THE COURT: I don't plan to hold it much longer.

MR. TABAK: We can only have a 60-day referendum if it is by March 15th. It would have to be by the middle of May.

THE COURT: Tuesday.

MR. TABAK: It has to be mailed. That's what I

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am trying to point out.

MR. SCHWARTZ: You refer to some of the resolutions that the convention, with regard to the question of counsel. As I understand it you are going to reserve a ruling on that because we haven't talked about that. When you say if there was any argument.

THE COURT: 844.

MR. SCHWARTZ: Not 844. We raised that and filed an affidavit in 489 because we said we wanted to file and amend the answer on behalf of the Offshore Division and on behalf of the International. That issue was referred to by your Honor when you referred to certain resolutions this morning and asked if there was any doubt that they had been passed. I would like to say if you are going to deal with that, that situation is a little different. That situation --

THE COURT: Excuse me. It is an issue that is raised collaterally, I gather.

MR. SCHWARTZ: The issue of referendum can certainly be decided separately. But since your Honor did talk about it this morning and referred to it as one of the actual resolutions that were passed, is there any argument about whether these were passed. I don't know if your Honor--

THE COURT: Excuse me. I am going to try to only rule on the issues that are before me and even at that as narrowly as possible.

MR. TABAK: May I before we leave your Honor, just quote Judge Pierce.

THE COURT: Which Judge Pierce is that?

MR. TABAK: Your memo and order of February 4, 1977, where you said "Moreover, the approaching constitutional convention (the delegates thereto having the power to nullify the effect of the referendum proposed by the defendant Scavo) militates against the showing of irreparability."

THE COURT: That's why I am going to rule very narrow on this. Mr. Cohen, I was about to ask you if you have any evidence that you want to present or anything you want to say. I gather there is no need for any more evidence.

MR. COHEN: Yes. I am extremely concerned about the TRO that was granted in 849.

THE COURT: 844.

MR. COHEN: I urge your Honor to review the affidavit which sets forth the irreparability of injury were a prompt decision not forthcoming with respect to that issue, because I think that we may find that by the

passage of time the attempt to permit the membership to determine this issue may be barred for a period of three years unless we -- that issue is resolved quickly.

MR. SCHWARTZ: Your Honor has indicated that you were going to confine this to 489.

THE COURT: No. The others --

MR. SCHWARTZ: 844 will follow.

THE COURT: Yes. I think 510 will as well.

MR. SCHWARTZ: I think that should as well. I will say as I pointed out in my affidavit that the items that were referred to involved simply a reclassification of ports which does not require, which in and of itself does not require a constitution, a bylaw amendment. If you simply reclassify ports I refer to that, I refer to the bylaw provision. It is only when you do additional things in addition to reclassifying ports that you have this amendment as has been the case in proposition 1, 2 and 3. Now what is going on now is that the Offshore Division executive council is in the process of meeting, and they have once before downgraded ports and they have reclassified ports and are in the process of reclassifying further.

THE COURT: Mr. Cohen, given the problems that you have stated with respect to the outstanding TRO, all counsel consent to the extention of the TRO pending the

determination of this 489, which I expect to be able to rule on hopefully by Monday afternoon. I announced that, not as a condition of this but for information.

MR. COHEN: Your Honor, I am most appreciative of the time and effort that you have put into this matter and obviously I do not choose to raise roadblocks.

THE COURT: All right. All counsel do consent to that.

MR. SCHWARTZ: Yes, your Honor.

THE COURT: Decision reserved.

MR. TABAK: Thank you, your Honor.

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(Time noted: 3:05)

OPINION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GERALD L. JOHNSON, CHARLES A. HEMMING, ORION A. LARSON, ROBERT THOMPSON, VIRGIL VALENTINE, individually and as members of the International Organization of Masters, Mates and Pilots of America, AFL-CIO, and the Offshore Division thereof,

Plaintiffs,

- v -

FRANK T. SCAVO, as President of the International Organization of Masters, Mates and Pilots and as Executive Officer of the Offshore Division,

Defendant.

77 Civ. 489

APPEARANCES:

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LAWRENCE W. PIERCE, D.J.

OPINION

Plaintiffs have instituted three actions against the defendant in which they have moved for orders preliminarily

and permanently enjoining the defendant, and all other persons and organizations in participation with him from submitting certain referanda to the membership of the International Organization of Mates, Masters, and Pilots (IOMM&P).

In 77 Civ. 489, plaintiffs seek to enjoin the submission of Proposition No. 2 to the membership until such time as the membership has voted upon another referendum, Proposition No. 1. Similarly in 77 Civ. 510, plaintiffs seek to enjoin altogether the submission of Proposition No. 3, "Proposed Offshore Division By-Laws Amendments for Fiscal Autonomy." And finally, in 77 Civ. 844, plaintiffs seek an order enjoining the defendant from submitting Proposition No. 4, "Reclassification of Ports." In each action, plaintiffs allege that the defendant Scavo is acting outside the scope of his authority and that the only means by which referenda purporting to amend the by-laws of the Offshore Division may be submitted to the membership is pursuant to Article XVIII of the Offshore Division By-Laws. Defendant Scavo alleges that he has the authority to submit such referenda by virtue of Article VI, §1(i) of the International Constitution.

A hearing on 77 Civ. 489 was held on March 11, 1977, also the return date of the Order to Show Cause issued in 77 Civ. 844. Pursuant to Rule 65 F.R.Civ.P., the hearing in 77 Civ. 489 was consolidated with the trial on the merits. The following shall constitute the Courts findings of fact

and conclusions of law pursuant to Rule 52 F.R.Civ.P.

Findings of Fact

The International Organization of Masters, Mates and Pilots (IOMM&P) is an international labor organization representing licensed deck officers and related classifications of maritime employees in the American Merchant Marine. The Offshore Division of the IOMM&P is one of the subordinate labor organizations comprising the IOMM&P. The Offshore Division consists of licensed deck officers and is one of the largest of the IOMM&P's divisions.

The plaintiffs in 77 Civ. 489 include Gerald L. Johnson and Robert J. Lowen, the Executive Vice President of the IOMM&P and Assistant Executive Officer of the Offshore Division; and the Secretary-Treasurer of the IOMM&P and the Chief Financial Officer of the Offshore Division, respectively.

Defendant Scavo and plaintiffs Johnson and Lowen are the three Executive Officers of both the IOMM&P and its Offshore Division. Their terms of office expire at the end of 1977 and, under the provisions of the International Constitution, and pursuant to court order, a mail referendum election for these three principal offices as well as other offices will be held in 1977. See Usery v. International Organization of Masters, Mates and Pilots, 538 F.2d 946 (2d Cir. 1976).

1. The Referenda

In or about January 1977, a petition was received by the defendant Scavo (Proposition No. 1) signed by at least 15% of the membership of the Offshore Division calling for a referendum to amend the Offshore Division By-laws in the following two respects:

a. To reclassify the ports within the jurisdiction of the Offshore Division and to freeze the classification of ports for a period of at least five years so as to prevent upgrading of ports within that period; and

b. To reduce that portion of the membership dues based on vacation pay from 6% to 5%.

This petition was submitted to Scavo pursuant to Article XVIII, Section 1 of the Offshore Division By-laws and conformed to the requirements of that provision.

Thereafter, in or about January 1977, defendant Scavo contracted with the American Arbitration Association (AAA) to hold a mail referendum of the members of the Offshore Division on proposed alternative amendments to the by-laws. One alternative was that contained in Proposition No. 1; the other, Proposition No. 2, called for a flat reduction in that portion of the Offshore Division membership dues based on vacation pay from 6% to 4%.

The latter alternative, Proposition No. 2, was initiated solely by the defendant Scavo in reliance upon Article VI, Section 1(i) of the International Constitution.

On or about February 23, 1977, plaintiffs filed 77 Civ. 489 seeking an injunction and temporary restraining order against Scavo to enjoin him from submitting Proposition No. 2 to the membership until such time as Proposition No. 1 had been voted upon. The application for the TRO was denied; hearing on the preliminary injunction was set for February 10, but later adjourned to February 14, and finally to March 11, 1977.

In or about February 1977, pursuant to an agreement between defendant Scavo and the AAA, the AAA sent out both Proposition No. 1 and Proposition No. 2 to all members of the Offshore Division. In or about this same time period, Proposition No. 3, "Proposed Offshore Division By-Laws Amendments for FiscalAutonomy", was similarly submitted.

Soon thereafter, defendant Scavo announced that he proposed to send out to the membership of the Offshore Division another referendum on a proposed amendment to the by-laws (Proposition No. 4). Plaintiffs, in response thereto, filed 77 Civ. 844 for a preliminary injunction and temporary restraining order. The Court granted the application for the TRO and the Order to Show Cause made returnable on March 11, 1977.

All propositions contained in the aforesaid referenda require the amendment of the by-laws of the Offshore Division.

2. Relevant Constitutional Provisions and By-laws

The powers of the International President are set forth in Article VI of the International Constitution. The president is authorized to:

> "(d) decide on all points of law, interpretations of the Constitution, and/or grievances submitted to him by the subordinate bodies . . ." and
>
> "(i) direct a referendum vote or a vote by membership meeting of any subordinate body on any matter, issue or proposition when he believes that the welfare of the membership of the subordinate body will be protected or enhanced by such action."

Pursuant to Article IX §4 of the International Constitution, the Offshore Division adopted Article XVIII as part of its by-laws which provides:

> "Section 1
>
> "These By-Laws may be amended by a secret majority referendum vote of the Division's membership.
>
> "Proposed amendments may be submitted to such membership vote by either a majority of the Offshore Division Executive Council or by a petition signed by fifteen percent (15%) of the Division's members in good standing.
>
> "Section 2
>
> "An impartial balloting agency shall conduct all referenda required by this Article."

3. The International Convention

Pursuant to Article VI of the International Constitution, an International Convention of the IOMM&P was held February 7-14, 1977, in San Diego, California. The delegates were duly qualified pursuant to Article IV, §4 and duly passed the following resolutions:

Agenda Item 57

"Affirmation that International President does not have authority to initiate referenda to amend International Cosntitution or Off-Shore Division By-laws and declaring illegal and void such referenda."

Agenda Item 85

"Offshore Petition for reclassification of ports properly posed by a petition signed by the members in accordance with Art. XVIII §1 of By-laws of Offshore Division."

Agenda Item 53

"Confirmation of ODEC Action Re Legal Counsel"

Agenda Item 54

"Prohibition of payment for legal fees to the firm of Jaffe, Cohen Crystal & Mintz. Confirming ODEC action."

Agenda Item 55

"Confirmation of ODEC Action authorizing Marvin Schwartz and Burton Epstein to continue rendering legal services to the Offshore Division."

Conclusions of Law

Jurisdiction of these actions is conferred upon the Court by operation of 29 U.S.C. §401 et seq., Labor

Management and Reporting Disclosure Act, (L.M.R.D.A.).

Notwithstanding the "constitutional crisis [which] has arisen in the operation of the [IOMM&P] and the Offshore Division", Defendant's Memorandum at 18,

> "The provisions of the L.M.R.D.A. were not intended by Congress to constitute an invitation to the courts to intervene at will in the internal affairs of unions . . . The internal operations of unions are to be left to the officials chosen by the members to manage those operations except in the very limited instances expressly provided by the Act . . . So long as the union in reaching its decision violates no provision of law, we judges should resolutely keep our hands off." Gurton v. Arons, 339 F.2d 371 at 375 (2d Cir. 1964).

Therefore, when the highest tribunal of the Union has interpreted a questioned provision in the constitution in a fair and reasonable manner, this Court may not reinterpret that provision. See Gardner v. Woodcock, 384 F.Supp. 239 (E.D. Mich. 1974) (citing Gurton, supra) and See Vestal v. Hoffa, 451 F.2d 706 (6th Cir. 1974), cert. denied, 406 U.S. 934 (1972).

The International Convention of the IOMM&P is "the source of all true and legitimate authority over the Organization and possesses as such supreme and absolute power over same and all channels leading thereto. . . " Article IV, §1, International Constitution of the IOMM&P.

The interpretations rendered by the International Convention through the passage of the resolutions cited in the

Court's findings of fact were fair and reasonable. To conclude that these resolutions were invalid attempts to amend the International Constitution would be contrary to the weight of the evidence presented. Furthermore, to accept defendant's contention that only the president may interpret the constitution would be unfair and unreasonable for such an interpretation of the constitution would place in the president the sole and unreviewable authority to pass upon the propriety or constitutionality of his own actions. Indeed, such an interpretation would be inconsistent with the democratic principles said to underlie the governance of the IOMM&P as well as the objectives of L.M.R.D.A. See 29 U.S.C. §401(a).

The Relief

Permanent injunctive relief is available where there is no adequate remedy at law, where the balance of the equities favor the moving party, and where success on the merits has been demonstrated. See Calella v. Onassis, 353 F.Supp. 196 (S.D.N.Y. 1972), modified on other grounds, 487 F.2d 986 (2d Cir. 1973).

There is no adequate remedy at law because of: the recurring nature of defendant's unauthorized acts; the consequent need for multiplicity of actions to assert plaintiff's rights; the clear likelihood of confusion to the membership; the possibility of further delay of the court-ordered

elections; and the difficulty of evaluating the harm caused plaintiffs in monetary terms. See Galella, supra, at 235 (cases cited therein); see also, Dino DeLaurentiis Cinematografica, S.p.A. v. D-150, Inc., 366 F.2d 373 (2d Cir. 1966).

The total effect of these conclusions is that the balance of hardships tips decidedly in favor of the moving party. See Hamilton Watch Co. v. Benrus Watch Co., 206 F.2d 738 (2d Cir. 1953). And plaintiffs have proved their cause of action by a fair preponderance of the credible evidence.

Accordingly, plaintiffs' motion for an order permanently enjoining defendant Scavo, and all others acting in concert therewith, from submitting referenda having the effect of amending the by-laws of the Offshore Division without adhering to the provisions of Article XVIII of the Offshore Division By-laws is hereby granted. Plaintiffs are to submit an appropriate order in 77 Civ. 489 on two days' notice. Since the issues presented in 77 Civ. 489 are similar, if not identical, to those presented in 77 Civ. 510 and 77 Civ. 844, the Court will await the parties' further actions in these remaining matters within ten days of entry of this order.

The parties have consented to the extension of the TRO issued in 77 Civ. 844 pending determination of 77 Civ. 489. The TRO is therefore extended until entry of judgment

in 77 Civ. 489. SO ORDERED.

Dated: New York, New York
March 14, 1977

LAWRENCE W. PIERCE
U. S. D. J.

ORDER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

GERALD L. JOHNSON, CHARLES A. HEMMING, ORION A. LARSON, ROBERT THOMPSON, VIRGIL VALENTINE, individually and as members of the International Organization of Masters, Mates and Pilots of America, AFL-CIO, and the Offshore Division thereof,

Plaintiffs,

-v-

FRANK T. SCAVO, as President of the International Organization of Masters, Mates and Pilots and as Executive Officer of the Offshore Division,

Defendant.

----------x

ORDER OF JUDGMENT

77 Civ. 489(LWL)

ORDER

A hearing in the above action, consolidated with trial on the merits, having been held on March 11, 1977, and the Court having rendered its opinion granting plaintiffs' motion for a permanent injunction, it is

ORDERED, ADJUDGED and DECREED:

1. That defendant Frank T. Scavo, his agents, servants, attorneys and employees and all others acting in concert with him or them, be and hereby are permanently enjoined from submitting to the membership of the Offshore Division of the International Organization of Masters, Mates and Pilots, any referendum or referenda not in compliance with the procedures provided for in the International Constitution, the Bylaws of the Offshore Division and such resolutions as are and were duly passed by the authorized delegates of the International Convention; and

2. That defendant Frank T. Scavo, his agents, servants, attorneys and employees and all others acting in concert with him or them, be and hereby are directed to comply with the mandates of the International Convention as embodied in the resolutions duly passed upon by the authorized delegates thereto, by submitting to the membership of the Offshore Division such referenda as are in compliance with the International Constitution, the Bylaws of the Offshore Division and the resolutions of the International Convention in accordance with the established procedures for submission of such

referenda and in accordance with such procedures as are established by the United States Department of Labor, if any; and outstanding court orders; and

3. That such referenda as was submitted to the membership of the Offshore Division by the defendant Frank T. Scavo and all those acting in concert with him, in contravention of the International Constitution, the Bylaws of the Offshore Division or the resolutions of the International Convention be given such force and effect as is mandated by said Constitution, Bylaws or resolutions; and

4. That final judgment be and hereby is entered for plaintiffs and that plaintiffs recover costs and disbursements of this action to be taxed by the Clerk.

LAWRENCE W. PIERCE
U. S. D. J.

Dated: New York, New York
April 8, 1977

JUDGMENT ENTERED - 4/11/77

S/Raymond Burkhardt
CLERK

BEST COPY AVAILABLE

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

GERALD L. JOHNSON, CHARLES A. HEMMING, ORION A. LARSON, ROBERT THOMPSON, VIRGIL VALENTINE, individually and as members of the International Organization of Masters, Mates and Pilots of America AFL-CIO, and the Offshore Division thereof,

Plaintiff,

-v-

FRANK T. SCAVO, as President of the International Organization of Masters, Mates and Pilots and as Executive Officer of the Offshore Division,

Defendant.

NOTICE OF APPEAL

77 Civ.489 (LWP)

----------X

Notice is hereby given that FRANK T. SCAVO, as President of the International Organization of Masters, Mates and Pilots and as Executive Officer of the Offshore Division, Defendant above named, hereby appeals to the United States Court of Appeals for the Second Circuit from each and every part of the Order of Judgment of United States District Judge Lawrence Pierce entered in this action on April 11, 1977, which order adjudged and decreed:

> 1. That defendant Frank T. Scavo, his agents, servants, attorneys and employees and all others acting in concert with him or them, be and hereby are permanently enjoined from submitting to the membership of the Offshore Division of the Interna-

tional Organization of Masters, Mates and Pilots, any referendum or referenda not in compliance with the procedures provided for in the International Constitution, the ByLaws of the Offshore Division and such resolutions as are and were duly passed by the authorized delegates of the International Convention; and

2. That defendant Frank T. Scavo, his agents, servants, attorneys and employees and all others acting in concert with him or them, be and hereby are directed to comply with the mandates of the International Convention as embodied in the resolutions duly passed upon by the authorized delegates thereto, by submitting to the membership of the Offshore Division such referenda as are in compliance with the International Constitution, the ByLaws of the Offshore Division and the resolutions of the International Convention in accordance with the established procedures for submission of such referenda and in accordance with such procedures as are established by the United States Department of Labor, if any; and outstanding court orders; and

3. That such referenda as was submitted to the membership of the Offshore Division by the defendant Frank T. Scavo and all those acting in concert with him, in contravention of the International Constitution, the ByLaws of the Offshore Division or the resolutions of the International Convention by given such force and effect as is mandated by said Constitution, ByLaws or resolutions; and

4. That final judgment be and hereby is entered for plaintiffs and that plaintiffs recover costs and disbursements of this action to be taxed by the Clerk.

Dated: New York, New York
April 14, 1977

JAFFE COHEN CRYSTAL & MINTZ

By Ernest Allen Cohen,
A member of the firm
Attorneys for Defendant
275 Seventh Avenue
New York, New York 10001
(212) 691-1200

ORDER OF COURT OF APPEALS DENYING EXPEDITED APPEAL

No.4 5-3-77

~~77-8076~~

UNITED STATES COURT OF APPEALS

77-7200

Second Circuit

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 5th day of May, one thousand nine hundred and seventy-seven.

Gerald L. Johnson, Charles A. Hemming, Orion A. Larson, Robert Thompson, Virgil Valentine, individually and as members of the International Organization of Masters, Mates and Pilots of America AFL-CIO, and the Offshore Division Thereof,

Plaintiffs-Appellees

v.

Frank T. Scavo, as President of the International Organization of Masters, Mates and Pilots and as Executives Officer of the Offshore Division,

Defendant-Appellant,

UNITED STATES COURT OF APPEALS FILED MAY 5 1977 A. DANIEL FUSARO, CLERK SECOND CIRCUIT

77-7200

It is hereby ordered that the motion made herein by counsel for the

appellant ~~appellee~~ ~~petitioner~~ ~~respondent~~

~~by notice of motion~~ dated April 20, 1977 for a stay and a preference

be and it hereby ~~is granted~~ denied

DENIED.

It is further ordered that the motion for an expedited appeal is denied. The matter is remanded to the District Court to permit application for a contempt adjudication pursuant to the existing order of the District Court. The appeal will otherwise be heard in regular course.

S.R.WATERMAN, C.J.J. — Stern R Waterman

M.J. GURFEIN, C.J.J. — Murray J Gurfein

BLUMENFELD, D.J. — M Joseph Blumenfeld

Circuit Judges

NOTICE OF MOTION FOR COMPLIANCE WITH ORDER OF DISTRICT COURT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

GERALD L. JOHNSON, CHARLES A. HEMMING, ORION A. LARSON, ROBERT THOMPSON, VIRGIL VALENTINE, individually and as members of the International Organization of Masters, Mates and Pilots of America, AFL-CIO, and the Offshore Division thereof,

Plaintiffs,

- against -

FRANK T. SCAVO, as President of the Internatinal Organization of Masters, Mates and Pilots and as Executive Officer of the Offshore Division,

Defendant.

- -x

77 Civil 489(LWP)

NOTICE OF MOTION

S I R S:

PLEASE TAKE NOTICE, that upon the pleadings and proceedings heretofore had herein, and upon the annexed affidavit of Jack Steinman, duly verified the 9th day of May, 1977, the undersigned will move This Honorable Court on the 1[illegible]th day of May, 1977 at 10:00 a.m. of that day or as soon thereafter as counsel can be heard at Room 1505 of the United States District Court for the Southern District of New York, located at Foley Square, New York, New York 10007 for the following relief:

For an Order pursuant to Rule 70 of the Rules of Civil Procedure for the United States District Courts, and pursuant to any and all other applicable rules, compelling the defendant to

comply with the Order of This Honorable Court dated April 8, 1977, (filed April 11, 1977); and for a further Order finding the defendant in contempt of This Honorable Court in failing to comply with said Order, dated April 8, 1977, and imposing punishment for such contempt, and for a further Order awarding plaintiffs reasonable attorneys' fees and costs in bringing on this motion, and for such other and further relief as to the Court seems just and proper.

Dated: New York, New York
May 9, 1977

Yours, etc.,

TABAK STEINMAN & MELLUSI
Attorneys for Plaintiffs

BY: _____
JACK STEINMAN
A Member of the Firm
Office & P. O. Address
299 Broadway, Suite 410
New York, New York 10007
WOrth 2-1590

TO:

MARVIN SCHWARTZ, ESQ.
243 Waverly Place
New York, New York

JAFFE COHEN, CRYSTAL & MINTZ, ESQS.
Attorneys for Defendant
275 Seventh Avenue
New York, New York 10001

AFFIDAVIT OF JACK STEINMAN, ESQ., FOR PLAINTIFFS, IN SUPPORT OF MOTION FOR COMPLIANCE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

GERALD L. JOHNSON, CHARLES A. HEMMING, ORION A. LARSON, ROBERT THOMPSON, VIRGIL VALENTINE, individually and as members of the International Organization of Masters, Mates and Pilots of America, AFL-CIO, and the Offshore Division thereof,

Plaintiffs,

- against -

FRANK T. SCAVO, as President of the International Organization of Masters, Mates and Pilots and as Executive Officer of the Offshore Division,

Defendant.

77 Civil 489 (LWP)

AFFIDAVIT

- -x

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

JACK STEINMAN, being duly sworn, deposes and says:

That I am a member of the Bar of This Honorable Court, that I am a member of the firm of Tabak, Steinman & Mellusi, the attorneys for the plaintiffs herein. That I am familiar with the matters hereinafter recited as they appear from the file herein. That I make the within Affidavit in support of this application for an Order to compel compliance with the Order of this Court dated April 8, 1977, and for an Order to punish the defendant for contempt and for such other and further relief as to the Court seems just and proper.

That the within application is made to This Honorable Court pursuant to leave granted by the Court of Appeals for the Second Circuit; that such leave was granted on the application of deponent's firm made as part of its opposition to a motion brought on by the appellants in the said Court of Appeals, returnable on May 3, 1977 for a preference on the appeal filed by the defendant herein and for a stay of the Order of April 8, 1977 filed on April 11, 1977. That the application for a stay and for a preference were denied by the Court of Appeals simultaneously with its grant of permission to the plaintiffs to move here for the relief now sought.

That deponents refrained from seeking the relief now sought until the present time. That inasmuch as this Court's Order of April 8, 1977, in substance, required the defendant to submit to the membership Proposition #1 and desist from submitting to the membership Proposition #2, except in accordancewith the Constitution of the International Organization of Masters, Mates and Pilots, and in accordance with the By-Laws of the Offshore Division, and in accordance with the resolution of the International Convention, and further in accordance with "such procedures as are established by the United States Department of Labor, if any", we wrote the said Department a letter, dated April 15, 1977, (furnishing the Court with a copy thereof) inquiring about any applicable procedures of said Department. A reply dated April 28, has been received with indication that a copy was sent to This Honorable Court. For the Court's convenience, a copy of each is annexed hereto marked respectively Exhibit A and Exhibit B.

There appears to be no requirement referred to in said letter or otherwise which the defendant cannot meet. To the best of deponent's knowledge, information and belief, the defendant Scavo has taken no steps to comply with the Order of This Honorable Court. Furthermore, it would appear from the papers submitted in behalf of Scavo in the Court of Appeals that he has taken no steps to comply with the Order of This Court, relying entirely upon his hopes of success on his appeal.

As the Court is aware, there are no remaining issues of fact in this dispute. No longer is there any legal question of the propriety of plaintiffs' petition, Proposition #1.

It is a fair conclusion from the papers submitted in the defendant Scavo's behalf in the Court of Appeals that he has delayed in submitting Proposition #1 separately by continuing to insist upon obtaining a simultaneous vote on Proposition #2, which he lacks the power to initiate. It is only logical that lacking the power to initiate a referendum himself, the defendant has compounded his wrongful conduct by insisting upon having his referendum submitted simultaneously with an unquestionably proper referendum initiated by a 15% petition.

In so doing, the defendant has thwarted Union counsel, the Constitution of the International Organization of Masters, Mates and Pilots, the By-Laws of the Offshore Division, the resolutions of the International Convention and most significantly, This Honorable Court.

Whatever the defendant's motives or intent, his actions and/or omissions to act do not lose their character as violations of law as contained in the Order of This Honorable Court. At the very least, he should be required to comply as quickly as possible. On the question of punishment, we leave the decision entirely within the discretion of This Honorable Court. Additionally, plaintiffs respectfully pray for reasonable attorneys' fees and costs in bringing on the instant motion. The latter relief is sought independently of and without prejudice to any application which plaintiffs may make herein for attorneys' fees and costs with respect to proceedings previously had herein.

WHEREFORE, for all the foregoing reasons, plaintiffs' application for an Order requiring the defendant to comply with the Order of April 8, 1977 should be granted, and the defendant herein should be found in contempt of said Order, and the defendant should be punished for such contempt, and the plaintiffs should be allowed reasonable attorneys' fees and costs in bringing on the instant motion and plaintiffs should be granted such other further and appropriate relief as to This Honorable Court seems just and proper.

Jack Steinman

JACK STEINMAN

Sworn to before me this
9th day of May, 1977.

Sheldon Tabak

SHELDON TABAK
Notary Public, State of New York
No. 3923935
Qualified in Nassau County
Qualified in New York County
Certificate filed in New York County
Commission Expires March 30, 1977

EXHIBIT "A" TO STEINMAN AFFIDAVIT - LETTER FROM PLAINTIFFS' ATTORNEYS TO U.S. DEPARTMENT OF LABOR DATED APRIL 15, 1977

Exhibit A

April 15, 1977

Gerard Gumpert, Esq.
Deputy Area Administrator
U. S. Department of Labor
Labor-Management Services Administration
26 Federal Plaza
New York, New York 10007

Re: Johnson et al v. Scavo
United States District Court
Southern District of New York
77 Civil 489 L.W.P.

Dear Sir:

As your file reveals, we are the attorneys for the plaintiffs in the above action.

We write at this time for the purpose of advancing the matter in compliance with Judge Pierce's order of March 14, 1977 and his "Order of Judgment" of April 8, 1977. Reading both in pari materia, it is our understanding that said orders require, in substance, the invalidation of Propositions #1 and #2 as heretofore submitted for vote to the membership of the Offshore Division, and re-submission of Proposition #1.

It is our further understanding that such invalidation and re-submission are to be in compliance with the procedures provided for in the International Constitution and the By-Laws of the Offshore Division and with the resolutions passed at the International Convention held in San Diego, California, between February 7th, and February 15th, 1977; the invalidation and re-submission are also required to be in accordance with procedures established by the Department of Labor, if any, and outstanding court orders.

April 15, 1977

Re: Johnson et al v. Scavo
77 Civil 489 L.W.P.

Accordingly, we respectfully request information as to what procedures, if any, have been established by the Department of Labor, as referred to by Judge Pierce, in order that appropriate steps may be taken to advance the matter in compliance with Judge Pierce's orders.

Bearing in mind the forthcoming court ordered elections, we believe it is necessary that the Department of Labor set up a time frame for the re-submission of Proposition #1, as ordered by Judge Pierce, so that it may be mailed, voted upon and counted and have its effect upon the aforesaid court ordered elections.

We should be pleased to discuss the within subject matter further if you so desire.

Very truly yours,

TABAK, STEINMAN & MELLUSI

BY: _____
JACK STEINMAN

JS:aa
cc:
Honorable Lawrence W. Pierce
Marvin Schwartz, Esq.
Ernest Allen Cohen, Esq.
American Arbitration Association

EXHIBIT "B" TO STEINMAN AFFIDAVIT - LETTER FROM U.S. DEPARTMENT OF LABOR TO PLAINTIFFS' ATTORNEYS DATED APRIL 28, 1977

Exhibit B

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
26 FEDERAL PLAZA
NEW YORK, NEW YORK 10007

In Reply Refer To:
30-7355(73)

April 28, 1977

Jack Steinman, Esq.
Tabak, Steinman and Mellusi
299 Broadway
New York, New York 10007

Dear Mr. Steinman:

This will acknowledge receipt of your letter of April 15 and will confirm our subsequent telephone conversation.

With respect to the problem of submission of Proposition #1 to the MMP membership, it has been and still is our position that the Proposition is subject to our review before it is mailed. In this case, since we already have seen Proposition #1, it would be necessary only to submit to this office any change which may be made to that Proposition and any prefatory language or letter of transmittal which may accompany the mailing. Such submission should be made by the union official(s) responsible for disseminating the referendum. No other procedures established by this Department would apply in this case.

Since the dissemination of Proposition #1 has been ordered by a court as a result of private litigation, this Department cannot and will not establish a time frame for the mailing of Proposition #1.

Very truly yours,

Gerard Gumpertz,
Deputy Area Administrator

cc: Honorable Lawrence W. Pierce
Marvin Schwartz, Esq.
Ernest Allen Cohen, Esq.
American Arbitration Association

PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR COMPLIANCE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

GERALD L. JOHNSON, CHARLES A. HEMMING, ORION A. LARSON, ROBERT THOMPSON, VIRGIL VALENTINE, individually and as members of the International Organization of Masters, Mates and Pilots of America, AFL-CIO, and the Offshore Division thereof,

77 Civil 489 (LWP)

Plaintiffs,

- against -

FRANK T. SCAVO, as President of the International Organization of Masters, Mates and Pilots and as Executive Officer of the Offshore Division,

Defendant.

- -x

MEMORANDUM IN SUPPORT OF MOTION TO COMPEL COMPLIANCE WITH ORDER OF APRIL 8, 1977 AND TO PUNISH FOR CONTEMPT FOR FAILURE TO COMPLY THEREWITH.

PRELIMINARY STATEMENT
AND
STATEMENT OF FACTS

In view of the recency of the proceedings herein and recognizing the familiarity of the Court with the facts herein as reflected in its endorsement order of February 4, 1977, its opinion of March 14, 1977 and its order of judgment dated April 8, 1977, we shall not repeat the facts referred to therein.

A motion has been made by the defendant Scavo, following his filing of a notice of appeal in the Court of Appeals

argued on May 3, 1977, and decided on May 5, 1977. Said motion sought a preference and a stay of the Order of April 8, 1977 (filed April 11, 1977). The motion has been denied. Simultaneously, the Court of Appeals granted plaintiffs' application for leave to apply to This Honorable Court for an Order to compel compliance with the aforesaid Order and/or to punish the defendant Scavo for contempt and for other appropriate relief.

THE ISSUES

The issues before This Court now are whether or not the defendant has violated the injunction and Order previously issued by the Court, and if so whether or not he should be held in civil contempt.

PART I

THE DEFENDANT HAS VIOLATED THE ORDER OF APRIL 8, 1977, AND SHOULD BE COMPELLED TO COMPLY.

The definition of civil contempt is simple.

"Civil contempt of course is committed when a person violates an order of the court which requires that person in specific and definite language to do or refrain from doing an act or series of acts".

See Lichtenstein v. Lichtenstein
425 F. 2 - 1111 (CCA - 3rd, 1970)
at page 1113.

Taking the contents of the Court's rulings herein

in pari materia (not to mention the resolutions of the International Convention referred to therein) there is no question of the specificity of the Court's Order and what is required of the defendant.

There is no question here, particularly in view of all papers submitted on behalf of the defendant in This Court and in the Court of Appeals that the defendant knew what the Order required and what it prohibited.

Nowhere is it even pretended that defendant has complied.

The Order, not having been reversed or modified or vacated or stayed, must be obeyed.

U. S. v. United Mine Workers of America
330 U. S. 258

The compulsion of compliance here sought is universally rocognized as within the inherent power of the Court, which undoubtedly has jurisdiction over the person of the defendant and the subject matter of this suit.

Compulsion being remedial, even the absence of wilfulness, does not relieve from an order of compliance.

See Franklin Mint Corp. v. Franklin Mint, Ltd.
(and cases cited therein) 360 F. Supp. 478
(E.D. - Pa. 1973)

THE DEFENDANT IS GUILTY OF CIVIL
CONTEMPT AND SHOULD BE PUNISHED.

We will not repeat at length that the defendant herein has been given clear instructions and fair notice and warning of

what he is required to do.

He has failed over a long period to comply. He has acted contrary to the advice of Union counsel, Union regulatory documents and Union bodies. He has thwarted the Court.

We respectfully leave the question of punishment to the discretion of This Honorable Court. We urge that there is no question however of wilfulness, and excessive delay.

PLAINTIFFS ARE ENTITLED TO REASONABLE ATTORNEYS'FEES AND COSTS INCURRED IN BRINGING THIS MOTION.

See Franklin Mint Corp. v. Franklin Mint, Ltd, supra.

Plaintiffs request appropriate relief as stated to which they claim entitlement based upon the relief required for compliance only, irrespective of the question of the defendant's subjection to punishment for contempt.

CONCLUSION

For all the foregoing reasons and based upon the authorities referred to herein, plaintiffs respectfully pray that the within motion be granted in all respects.

Respectfully submitted,

TABAK STEINMAN & MELLUSI
Attorneys for Plaintiffs
Office & P. O. Address
299 Broadway, Suite 410
WOrth 2-1590

JACK STEINMAN, On Memorandum

NOTICE OF CROSS-MOTION FOR CLARIFICATION OF ORDER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X

GERALD L. JOHNSON, CHARLES A. HEMMING, ORION A. LARSON, ROBERT THOMPSON, VIRGIL VALENTINE, individually and as members of the International Organization of Masters, Mates and Pilots of America, AFL-CIO, and the Offshore Division thereof,

Plaintiffs,

- against -

FRANK T. SCAVO, as President of the International Organization of Masters, Mates and Pilots and as Executive Officer of the Offshore Division,

Defendant.

----------X

77 Civ. 489
(LWP)

NOTICE OF
CROSS-MOTION

S I R S:

PLEASE TAKE NOTICE, that upon the pleadings and proceedings heretofore had herein, and upon the annexed affidavit of Ernest Allen Cohen, duly verified the 11th day of May, 1977, the undersigned will cross-move on the 17th day of May, 1977 at 10:00 A.M. of that day or as soon thereafter as counsel can be heard at Room 1505 of the United States District Court for the Southern District of New York, located at Foley Square, New York, New York 10007 for the following relief:

For an Order clarifying the Order of Judgment of this Court dated April 8, 1977 (filed April 11, 1977) and for such other and further relief as to the Court seems just and proper.

Dated: New York, New York
May 11, 1977

Yours, etc.,

JAFFE COHEN CRYSTAL & MINTZ
Attorneys for Defendant

By:_____
Ernest Allen Cohen
A Member of the Firm
Office & P.O. Address
275 Seventh Avenue
New York, New York 10001

TO:

MARVIN SCHWARTZ, ESQ.
243 Waverly Place
New York, New York

TABAK, STEINMAN & MELLUSI
299 Broadway, Suite 410
New York, New York 10007

AFFIDAVIT OF ERNEST ALLEN COHEN, FOR DEFENDANT SCAVO, IN SUPPORT OF CROSS-MOTION FOR CLARIFICATION AND IN OPPOSITION TO MOTION FOR CONTEMPT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X

GERALD L. JOHNSON, CHARLES A. HEMMING, ORION A. LARSON, ROBERT THOMPSON, VIRGIL VALENTINE, individually and as members of the International Organization of Masters, Mates and Pilots of America, AFL-CIO, and the Offshore Division thereof,

Plaintiffs,

- against -

FRANK T. SCAVO, as President of the International Organization of Masters, Mates and Pilots and as Executive Officer of the Offshore Division,

Defendant.

----------X

AFFIDAVIT

77 Civ. 489 (LWP)

STATE OF NEW YORK)
)ss.:
COUNTY OF NEW YORK)

ERNEST ALLEN COHEN, being duly sworn, deposes and says:

1. I am a member of the law firm of Jaffe Cohen Crystal & Mintz, attorneys for Defendant Frank T. Scavo, as President of the International Organization of Masters, Mates and Pilots and as Executive Officer of the Offshore Division. This affidavit is made in support of a cross-motion seeking clarification of an order duly entered April 11, 1977 in the above captioned matter, copy of which order is annexed hereto as Exhibit "A" hereof. This affidavit is also submitted in opposition to a motion for an order to punish the Defendant for contempt.

2. Annexed hereto as Exhibit "B" is a copy of a proposed order and permanent injunction which was submitted by the plaintiffs and which was not signed by this Court. Plaintiffs seek by motion to act as though the order which they submitted and which was not signed by this Court nonetheless is effective in this matter. Unlike the order signed by the Court, the proposed order submitted by the plaintiffs specifically declared the combined referenda of Propositions No.1 and No. 2 to be null and void and required that ballots cast with respect to such referenda "be disregarded and not counted". The proposed order submitted by plaintiffs, unlike the order signed by the Court, also provided "that the defendant shall immediately or as soon hereafter as is possible, cause Proposition 1 to be submitted separately to the membership of the Offshore Division for referendum vote ..."

3. The order signed by the Court contained four paragraphs. The first enjoined in futuro any referendum or referenda from being submitted by the Defendant or others not in compliance with the procedures of the International Constitution, By-Laws of the Offshore Division and Resolutions of the International Convention. The second paragraph required that the Defendant comply with the mandates of the International Convention by submitting to the membership of the Offshore Division such referenda as are in compliance with the International Constitution, By-Laws of the Offshore Division and Resolutions of the International Convention.

in accordance with established procedures for submission of such referenda and in accordance with such procedures as are established by the United States Department of Labor. The third ordering paragraph provided that referenda which were submitted to the membership of the Offshore Division in contravention of the International Constitution, the By-Laws of the Offshore Division, or the Resolutions of the International Convention by given such force and effect as is mandated by the Constitution, By-Laws or Resolutions. The fourth ordering paragraph granted final judgment to the plaintiffs together with costs and disbursements to be taxed by the Clerk.

With respect to the first ordering paragraph, it is clear that the Defendant may not send referenda which have the effect of amending the By-Laws of the Offshore Division to the members of the Offshore Division pursuant to the powers of the International President acting on his own judgment. The President has fully complied with this requirement.

With respect to the second ordering paragraph, it is clear that the Resolutions approved by the International Convention did not establish procedures for submitting Proposition 1 to the membership of the Offshore Division. The Resolutions did not set forth whether a Ballot Committee was necessary, and, if so, its powers and functions. Nor did the resolutions establish the length of the balloting period. The President promptly sought to clarify this confusion by submitting the matter for instructions from the Offshore Division Executive Council. The Offshore

Division Executive Council designated by a Ballot Committee, but tabled any further action with respect to this matter despite the President's request for explicit instructions. Accordingly, the President sought the opinion of International Counsel immediately upon the conclusion of the meeting of the Offshore Division Executive Council. A copy of the telex of the President to International Counsel, dated May 9, 1977, is annexed hereto as Exhibit "C". The reply received by the President from International Counsel was not responsive. Annexed hereto as Exhibit "D" is a copy of the telex of May 9, 1977 from International Counsel to the Defendant. Thereupon, your affiant was furnished with copies of both telexes by the Defendant and wrote a letter to the International Counsel, a copy of which is annexed hereto as Exhibit "E". Defendant, thereupon communicated to the members of the Ballot Committee designated by the Offshore Division Executive Council, a copy of which is annexed hereto as Exhibit "F".

4. It is clear that the President has been diligently seeking to determine the appropriate action to be taken with respect to this matter and is following the appropriate channels pursuant to the International Constitution, the Offshore Division By-Laws and the Resolutions adopted by the Convention. The problems at this moment include the following:

(a) Should the form of the ballot and accompanying explanation to the membership of the Offshore Division be prepared by the Ballot Committee designated by the Offshore

Division Executive Council and should the forwarding of ballots to be done under the general supervision of the Ballot Committee?

(b) Is it appropriate to forward Proposition 1 at a time when all membership ballots are in the hands of the American Arbitration Association with respect to Propositions 1 and 2, prior to the counting of such ballots in order to determine whether Proposition 1 may have already been approved by the membership? To submit Proposition 1 again without counting the ballots now in the hands of the American Arbitration Association may result in duplication of expense to the Union and totally unnecessary confusion to the members who may be asked to vote again on a matter which they have already approved. Moreover, it may needlessly delay the effectuation of the provisions of Proposition 1 pending a further balloting period.

(c) For what period of time should balloting with respect to Proposition 1 be conducted, assuming that Proposition 1 is to be submitted to the membership? Should such period be determined by the Ballot Committee, the Defendant, the Offshore Division Executive Council, the Department of Labor, the Court or any other body within the Union?

5. With regard to the third ordering paragraph, it is not at all clear whether the Constitution, By-Laws or Resolutions would permit full force and effect to be given to Proposition 1 in the combined referenda, provided

that Proposition 1 was approved by the membership of the Offshore Division in that referenda. Moreover, since the entire thrust of the Court order was prospective in nature it left the question of the force and effect to be given to the referenda which were pending at the time of the order to determination by appropriate bodies within the Union having the benefit of the Court opinion in making such determination.

6. The Defendant has made it clear at all times that he intends to fully comply with any and all directions or orders of this Court. The Defendant has expeditiously undertaken the appropriate steps to bring this matter to the attention of the appropriate bodies within the Union, has sought instructions from the Offshore Division Executive Council, has sought consultation with International Counsel and has undertaken steps to convene a Ballot Committee in accordance with the directions of the Offshore Division Executive Council. The President has fully complied with the clear mandate of the order of the Court concerning prospective action. He has attempted to comply and is continuing to attempt to comply with those provisions of the order which deal with the existing referenda and Proposition 1.

7. It would be of great assistance to all of the parties if the Court would clarify the following matters relevant to the Order entered April 11, 1977:

(a) It is within the jurisdiction of the Ballot Committee appointed by the Offshore Division Executive Council to determine whether or not to count the ballots already cast in the combined referenda?

(b) If so, is it within the jurisdiction of the Ballot Committee to withhold causing Proposition 1 to be submitted separately to the membership for approval pending the outcome of the counting of the ballots in order to determine whether Proposition 1 has already been approved?

(c) Is it within the jurisdiction of the Ballot Committee to determine explanatory material to be sent accompanying Proposition 1, if Proposition 1 is to be sent separately to the membership of the Offshore Division?

(d) Is it within the jurisdiction of the Ballot Committee to determine the balloting period with respect to Proposition 1 if it is to be sent separately to the membership?

(e) Is it within the jurisdiction of the Ballot Committee to oversee and supervise the sending of Proposition 1 if it is to be sent separately to the membership of the Offshore Division?

(f) With respect to each of the questions, if such questions are not within the jurisdiction of the Ballot Committee, does the International President have the authority to make such determinations?

(g) If neither the Ballot Committee nor the International President has the authority to make such determinations, does the Offshore Division Executive Council have the power to make such determinations?

(h) If the Offshore Division Executive Council has the power to make such determinations and withholds action,

what authority does the President have to cause such determinations to be made? (As previously noted, the Offshore Division Executive Council has already been requested by the International President to take action with respect to Proposition 1 and has tabled all matters other than the designation of a Ballot Committee.)

8. It would appear that the present motion being brought directly following the vote by the Offshore Division Executive Council to table the request by the International President for instructions with respect to Proposition 1, which tabling vote was joined in by the individual plaintiffs who are members of the Offshore Division Executive Council, is nothing more than a transparent attempt to embarrass the President and use this Court to achieve a political advantage for the individual plaintiffs. Your affiant is confident that this Court will not permit itself to be used in this fashion.

Sworn to before me this
11th day of May, 1977

ERNEST ALLEN COHEN

EXHIBIT "A" TO COHEN AFFIDAVIT - ORDER ENTERED APRIL 11, 1977 (reproduced herein at pages A-164 - A-165)

EXHIBIT "B" TO COHEN AFFIDAVIT - PROPOSED ORDER AND PERMANENT INJUNCTION SUBMITTED BY PLAINTIFFS AND NOT SIGNED BY COURT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

GERALD L. JOHNSON, CHARLES A. HEMMING, ORION A. LARSON, ROBERT THOMPSON, VIRGIL VALENTINE, individually and as members of the International Organization of Masters, Mates and Pilots of America, AFL-CIO, and the Offshore Division thereof,

Plaintiffs,

- against -

FRANK T. SCAVO, as President of the International Organization of Masters, Mates and Pilots and as Executive Officer of the Offshore Division,

Defendant.

77 Civil 489 (LWP)

ORDER AND PERMANENT INJUNCTION

- -x

Plaintiffs, having instituted the within action for injunctive relief pursuant to the provisions of Title 29 U. S. C. §401 et seq, "Labor Management and Reporting Disclosure Act", and plaintiffs having moved for an order permanently enjoining the defendant Scavo and all others acting in concert with him from submitting referenda to the membership of the Offshore Division of the International Organization of Masters, Mates and Pilots, having the effect of amending the By-Laws of the Offshore Division without adhering to the provisions of Article XVIII of the Offshore Division By-Laws, and for other appropriate relief, and a hearing consolidated with trial on the merits pursuant to Rule 65 of the Federal Rules of Civil Procedure having been had herein on March 11, 1977, and due deliberation having been had, and the Court by order

dated March 14, 1977, having rendered its written opinion granting plaintiffs' above motion, and the Court having set forth Findings of Fact and Conclusions of Law, pursuant to Rule 52 of the Federal Rules of Civil Procedure, it is hereby

ORDERED, that the ballots containing Propositions #1 and #2 referred to in the aforesaid Findings of Fact as "The Referenda" as previously submitted to the membership in February of 1977, be and the same hereby are declared null and void, and any ballots which may be returned to the American Arbitration Association shall be disregarded and not counted, and it is further

ORDERED that the defendant shall immediately or as soon hereafter as is possible, cause Proposition #1 to be submitted separately to the membership of the Offshore Division for referendum vote, the ballot to contain the following legend:

> "This ballot is submitted to the Offshore Division membership for vote pursuant to Article XVIII Sections 1 and 2 of the By-Laws of the Offshore Division and further pursuant to an order of the United States District Court for the Southern District of New York, dated March , 1977 in Civil Action No. 77-489(LWP)"

and it is further

ORDERED that the aforesaid referendum vote so submitted shall be taken within 60 days of the date of mailing of the aforesaid ballots, and in any event, the vote shall be concluded and the results made known to the membership not later than May 20, 1977, and it is further

ORDERED that during the time referred to in the preceding paragraph hereof, the defendant Scavo and all others acting in concert with him, are permanently enjoined from submitting any referendum, having the effect of amanding the By-Laws of the Offshore Division, without complying with and adhering to the provisions of Article XVIII of the Offshore Division By-Laws, and it is further

ORDERED that the plaintiffs shall recover from the defendant Scavo the costs and disbursements of this action, and it is further

ORDERED that nothing herein contained shall be construed as pertaining to the question of the entitlement of plaintiffs' attorneys to recover reasonable attorneys' fees from the defendant Scavo, which question is expressly left undecided, without prejudice, however, to the right of plaintiffs' attorneys to make application forreasonable attorneys' fees in due course.

Dated: New York, New York
, 1977

SO ORDERED:

_____

U. S. D. J.

EXHIBIT "C" TO COHEN AFFIDAVIT - TELEX FROM PRESIDENT TO INTERNATIONAL COUNSEL DATED MAY 9, 1977

MMMMMMMMVM

WAVERLY PL NYK

IOMMP NYK

5/9/77 1115 ESDT

ATTN MARVIN SCHWARTZ

ON APRIL 11, 1977 JUDGE PIERCE HANDED DOWN AN ORDER REGARDING MY AUTHORITY IN INITIATING A REFERENDA AND OTHER MATTERS WHICH WERE ACTED ON AT THE 63RD CONVENTION IOMM&P IN SAN DIEGO CALIFORNIA I NEVER DID FULLY UNDERSTAND EXACTLY THAT ORDER COMPLETELY WITH THE EXCEPTION THAT I DID NOT HAVE THE AUTHORITY TO INITIATE A REFERENDUM

AS INTERNATIONAL
AS INTERNATIONAL COUNSEL, I AM REQUESTING THAT YOU EXPLAIN IN DETAIL EXACTLY WWHAT THIS ORDER MEANS IN LAYMAN' S LANGUAGE

AM I NOW REQUIRED TO SEND OUT PROPOSITION 1 SEPARATELY ON A REFERENDUM?

WILL I NEED A BALLOT COMMITTEE OR DO HAVE T(INSERT I BETWEEN OR AND CORRECTION INSERT I BETWEEN D AND HAVE)THE AUTHORITY TO INSTRUCT THE AAA TO SEND IT OUT FORTHWITH?

WHAT IS THE STATUS OF THE BALLOT WHICH CONTAINS PROPOSITION 1 AND PROPOSITION 2 AT THIS POINT?

AWAITING YOUR EARLY RESPONSE.

F T SCAVO
PRESIDENT

O

EXHIBIT "D" TO COHEN AFFIDAVIT - TELEX FROM INTERNATIONAL COUNSEL TO DEFENDANT DATED MAY 9, 1977

WAVERLY PL NYK
◆
IOMMP NYK

MAY 0, QOUU

MAY 9,1977

CAPTAIN FRANK T. SCAVO
IOMMP NEW YORK

RE: YOUR TELEX WITH REFERENCE
TO JUDGE PIERCE'S ORDER

JUDGE PIERCE'S ORDER IS CLEAR ENOUGH. WHY YOU SAY YOU DO NOT "FULLY UNDERSTAND EXACTLY THAT ORDER COMPLETELY" IS MORE THAN I CAN UNDERSTAND. BESIDES, YOU HAVE YOUR OWN LAWYER WHO I AM SURE UNDERSTANDS THE ORDER, PARTICULARLY SINCE HE DIS ASK THE COURT OF APPEALS FOR A STAY OF THAT ORDER. IN ADDITION, UNDER THE CIRCUMSTANCES OF THE LITIGATION, HE IS THE LAWYER WITH WHOM YOU MUST CONSULT

FINALLY. WHEN AT THE MEETING OF THE OFFSHORE DIVISION EXECUTIVE COUNCIL ON APRIL 29, I TRIED TO ADVISE YOU WHAT YOU HAD TO DO TO COMPLY WITH JUDGE PIERCE'S DECISION, YOU NOT ONLY IGNORED MY ADVICE, BUT YOU ALSO RIDICULED IT.

MARVIN SCHWARTZ

CC: CAPTAIN GERALD L. JOHNSON
CAPTAIN ROBERT J. LOWEN

WAVERLY PL NYK
◆
IOMMP NYK
T

EXHIBIT "E" TO COHEN AFFIDAVIT - LETTER FROM DEFENDANT'S ATTORNEYS TO INTERNATIONAL COUNSEL DATED MAY 10, 1977

May 10, 1977

Marvin Schwartz, P.C.
243 Waverly Place
New York, New York 10014

Re: Johnson and Lowen v.
Frank Scavo, etc.
77 Civ. 489 (LWP)

Dear Mr. Schwartz:

Frank has furnished me with a copy of his telex to you and your responding telex to him with regard to Proposition 1.

It is most unfortunate that you appear to take the position that you are in some way relieved of the responsibility of advising Frank in his position as International President with respect to the interpretation of an Order affecting his responsibility. Obviously, the President is not compelled to accept the advice of International Counsel but it is difficult to understand any theory upon which you can refuse to furnish advice when it is requested. You and I both know that Judge Pierce did not specify in his Order that the pending vote with respect to the combined Propositions 1 and 2 was to be suspended nor did he specify that pending the outcome of that vote a new Proposition 1 be sent to the membership. As a matter of fact, Judge Pierce's Order appears to be specific only with reference to future Referenda rather than with respect to Referenda currently in process.

As you know, immediately upon receiving Judge Pierce's Order Frank arranged for the matter to be submitted to the Offshore Division Executive Council and it was in fact submitted to their very next meeting after the issuance of the Order. The Offshore Division Executive Council apparently acted in a limited fashion by dealing with the issue of Ballot Committee only. It would appear that the alternatives available to Frank at this time are as follows:

1. To submit this matter to the Ballot Committee for such action as they may deem appropriate.

2. To submit Proposition 1 to the American Arbitration Association for immediate processing.

3. To await further instructions from Judge Pierce seeking clarification of his Order.

Of particular concern is the possibility that Proposition 1 may have already been enacted by the membership and that therefore it is subjecting the membership of the Offshore Division to needless expense and confusion by resubmitting Proposition 1 as a separate Proposition. Since all of the ballots with respect to the combined Propositions 1 and 2 will be in the hands of the American Arbitration Association by the time any action can be taken, orderly and expeditious procedure would seem to be that the ballots should be counted and that Proposition 1 not be sent to the membership unless it was defeated in the combined Propositions 1 and 2. Nonetheless, Frank is willing to examine all other possible alternatives for dealing with this most complicated and difficult situation pending its final resolution by the Appellate Court. Your response seems to indicate that you are more interested in playing politics than in attempting to constructively deal with a serious problem confronting the Union. If it is your position that you

have no obligation to furnish the President with advice when he seeks it from you, I request that you clarify this point because the President is entitled to know whether or not advice is available to him from International Counsel. You know that Frank has not taken the position throughout these proceedings that you are not International Counsel. He has continued to seek your advice in that capacity and to utilize it in reaching his conclusions. If your telex of May 9, 1977 means that you will no longer fulfill this function, then you leave Frank with no alternative but to explore alternate means of obtaining professional advice with respect to the functions of International Counsel which you have refused to fulfill.

This law firm would much prefer not to play the role of an intermediary in this situation and would suggest that you respond in an appropriate and professional fashion to Frank's telex to you of May 9, 1977.

Very truly yours,

JAFFE COHEN CRYSTAL & MINTZ

Ernest Allen Cohen

EAC/jcs
cc: Mr. Frank Scavo

EXHIBIT F TO COHEN AFFIDAVIT - LETTER FROM DEFENDANT TO MEMBERS OF THE BALLOT COMMITTEE

International Organization of

Masters, Mates & Pilots

39 Broadway, New York, N.Y. 10006/(212) 425-3860/Cable BRIDGEDECK/Telex No. 12-5858

FRANK T. SCAVO
International President
GERALD L. JOHNSON
International Executive Vice President
ROBERT J. LOWEN
International Secretary-Treasurer

TO THE MEMBERS OF THE BALLOT COMMITTEE:

I would like to convene a meeting of the Ballot Committee to consider possible action with respect to forwarding a Referendum (Proposition 1, which deals with dues reduction and reclassification of Ports) to the membership of the Offshore Division. Proposition 1 has already been voted upon by the membership in combination with a second Proposition (Proposition 2, which deals with the dues reduction and effectuation of economies) and the ballots have been received by the American Arbitration Association, but have not yet been counted.

The submission of Propositions 1 and 2 together to the membership was originally sought to be prevented by certain proponents of Proposition 1. The attempt to stay the submission of Propositions 1 and 2 combined was rejected by the Court and Propositions 1 and 2 combined was thereafter submitted for membership approval. Subsequently, the Court ruled that Proposition 1 was valid and ruled that there was no authority for the submission to the membership of Propositions 1 and 2 combined. Following the Court order the matter was placed before the Offshore Division Executive Council which tabled the matter but which upheld the designation of each of you as a standing Ballot Committee to assist me in processing future Referenda.

I have sought advice of International Counsel by telex of May 9, 1977 and have received back a telex which evades my specific questions. I would like to meet with each of you as soon as possible so that we may consider together the appropriate action to be taken in this matter.

Please call me collect at International Headquarters as soon as you receive this letter so that we can arrange for a meeting.

Fraternally,

Frank T. Scavo
International President and
Executive Officer, Offshore
Division

FTS/jw

DEFENDANT'S MEMORANDUM IN SUPPORT OF CROSS-MOTION FOR CLARIFICATION AND IN OPPOSITION TO MOTION FOR CONTEMPT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X

GERALD L. JOHNSON, CHARLES A. HEMMING, ORION A. LARSON, ROBERT THOMPSON, VIRGIL VALENTINE, individually and as members of the International Organization of Masters, Mates and Pilots of America, AFL-CIO, and the Offshore Division thereof,

Plaintiffs,

77 Civ. 489 (LWP)

- against -

FRANK T. SCAVO, as President of the International Organization of Masters, Mates and Pilots and as Executive Officer of the Offshore Division,

Defendant.

----------X

MEMORANDUM IN SUPPORT OF MOTION TO CLARIFY ORDER DATED APRIL 8, 1977 AND IN OPPOSITION TO APPLICATION TO PUNISH DEFENDANT FOR CONTEMPT FOR FAILURE TO COMPLY THEREWITH

Preliminary Statement and Statement of Facts

The facts in this matter are both fully familiar to the Court and are set forth in the affidavit of Ernest Allen Cohen sworn to the 11th day of May, 1977.

The Issue

The issue before this Court is whether or not the Court Order of Judgment dated April 8, 1977 required defendant Scavo in specific and definite language to submit to the membership of the Offshore Division Proposition 1 and whether the said Court Order established the appropriate procedures for the submission

to the membership of such proposition.

POINT I

The defendant has not violated the order of this Court of April 8, 1977

Civil contempt has been defined as being committed "when a person violates an order of the Court which requires that person in specific and definite language to do or refrain from doing an act or series of acts". See Lichtenstein v. Lichtenstein, 425 F. 2d 1111, 1113 (3rd. Cir. 1970).

The Court's order of April 8, 1977 directed defendant to comply with the mandates of the International Convention by submitting to the membership of the Offshore Division such referenda as are in compliance with the International Constitution, the By-Laws of the Offshore Division and the Resolutions of the International Convention in accordance with the established procedures for submission of such referenda. The Court's order did not in "specific and definite language" set forth the established procedures for the submission of such referenda to the membership of the Offshore Division. Many questions remained unanswered as to the role of defendant, a ballot committee, the Offshore Division Executive Council, the International Sub-Committee, the General Executive Board, and the role of the Convention itself in connection with the submission of said referendum to the membership of the Offshore Division. The unanswered questions as set forth at length in the affidavit of Ernest Allen Cohen, sworn to on May 11, 1977. It can therefore not be said with any degree of certainty that the Court Order of April 8, 1977 has

been violated by the defendant. In fact, the defendant has complied with the Court Order and has sought guidance from both the Offshore Division Executive Council and International Counsel as to the appropriate steps to be taken in this matter.

Conclusion

For all the foregoing reasons, defendant respectfully prays that the application to punish defendant for contempt be denied, and the cross-motion for clarification of the Court's Order of Judgment dated April 8, 1977 be granted.

Respectfully submitted,

JAFFE COHEN CRYSTAL & MINTZ

Ernest F Allen Cohen

ERNEST ALLEN COHEN
Attorneys for Defendant
275 Seventh Avenue
New York, New York 10001
212 691 1200

ALLEN B. BRESLOW, On Memorandum

AFFIDAVIT OF SHELDON TABAK, ESQ., FOR PLAINTIFFS, IN SUPPORT OF MOTION FOR CONTEMPT AND IN REPLY TO CROSS-MOTION FOR CLARIFICATION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GERALD L. JOHNSON, CHARLES A. HEMMING, ORION A. LARSON, ROBERT THOMPSON, VIRGIL VALENTINE, individually and as members of the International Organization of Masters, Mates and Pilots of America, AFL-CIO, and the Offshore Division thereof,	77 Civil 489 (LWP)
Plaintiffs,	AFFIDAVIT
- against -	
FRANK T. SCAVO, as President of the International Organization of Masters, Mates and Pilots and as Executive Officer of the Offshore Division,	
Defendant.	

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

SHELDON TABAK, being duly sworn, deposes and says:

That I am a member of the Bar of this Honorable Court; I am a member of the firm of Tabak, Steinman & Mellusi, the attorneys for the plaintiffs herein, I am familiar with the matters hereinafter recited as they appear from the file.

That I make this affidavit in support of the application for an order to compel compliance with the order of this Court dated April 8, 1977 and for an order to punish the defendant for contempt and for such other and further relief as this Court deems just and proper and more particularly as a reply to the defendant's notice of cross motion returnable on May 17, 1977 at 10:00 a.m.

Very bluntly and plainly spoken, it is your deponent's belief that the request for a clarification of the Court's order dated April 8, 1977 and duly entered on April 11, 1977 is frivolous and sham, and an after thought, an attempt to crawl out from defendant Scavo's obvious and deliberate refusal to take any appropriate responsive actions following the making of the said order.

Defendant had sufficient understanding of the order to take an appeal therefrom. If he didn't understand the order, why didn't he immediately ask the Court for clarification of the order in order to understand what he was appealing from? Why did he wait to request clarification until after the Appeals Court granted plaintiff's request to move in this Court to punish for contempt?

Are we truly to believe one who on one hand purports not to understand the order, and on the other hand claims that he intends fully to comply?

The question answers itself. Moreover, it seems to us that hardly any one could have taken all the evasive actions detailed in the opposing affidavit on behalf of the defendant Scavo, unless he fully understood what he was attempting to evade.

We pause to point out that in our opinion it is significant that there is no affidavit of the defendant himself clearly stating that he has not and does not understand the order in question.

Defendant has clearly and specifically known the significance of the order of April 11, 1977 since immediately following its

being received by him (and/or his counsel) and has played for time to have Proposition 1 and 2 returnable so that they could be counted. Even after the Court of Appeals has told him that the ballots should not be counted, he still requests that they be counted and has made "approaches" to every possible source so that they could be counted. In fact, he even has the audacity at this time to contend that if they are not counted, it may be of extra expense to the union. When expense was pointed out to him very early in this proceeding, (at the time of one of the first hearings before the Court and before the convention in San Diego) and the Court entered an order of February 4, 1977 stating in substance that the convention would have something to say about this matter, the defendant ignored the Court's suggestion, and went ahead and had the Propositions mailed out at great expense to the union, and did not wait one week for the convention delegates to voice their opinion. Now, is the defendant Scavo concerned about expense?

With all due respect for defendant's counsel, it is noted that once again he has made his own windmills and once again he has attempted to blow them down. Nowhere did we imply, state or refer to our proposed order which the Court did not sign. We merely asked that the defendant be compelled to carry out the Court's order of April 11, 1977.

If the defendant had any reasonable questions about the April 11, 1977 order, he should have brought these forth to the necessary and proper parties long before this time. His failure to even ask the questions, if in truth he doesn't "understand",

should avail him not in this Honorable Court in this proceeding.

It should further be noted that his earliest claimed purported request for advice concerning the Court's order of April 11, 1977 is in a self-serving telex to attorney Marvin Schwartz, dated May 9, 1977, approximately one month after the Court order. It is responded to on the same day, May 9, 1977, wherein attorney Schwartz stated in part, "Finally when at the meeting of the Offshore Division Executive Counsil on April 29, 1977, I tried to advise you what you had to do to comply with Judge Pierce's decision, you not only ignored my advice, but you also ridiculed it."

If this be true, it is not the actions of an innocent, confused or uninformed individual. It appears to be the actions of one who is extremely knowledgeable, deceptive, and possibly contemptuous.

In the affidavit of Ernest Allan Cohen, Item "8" he states in part that this is "nothing more than a transparent attempt to embarrass the President and use this Court to achieve a political advantage for the individual plaintiffs." Whenever defendant gets put into a position wherein he cannot defend his position on the merits, he has constantly fallen back on a device which he himself has contrived and which he himself uses both as a sword and a shield.

In the next line, Mr. Cohen states further "Your affiant is confident that this Court will not permit itself to be used in this fashion." Your deponent is equally confident that this Court will not be taken in by the defendant's feeble and unsupported excuses and his attempt to turn the entire matter around so that

it would seem that he is the aggrieved party rather than the one who is causing the grief.

WHEREFORE, it is respectfully requested that this Court enter an order pursuant to Rule 70 of the Rules of Civil Procedure for the United States District Court, and pursuant to any and all other applicable rules, compelling the defendant to comply with the order of this Honorable Court dated April 8, 1977, (filed April 11, 1977); and for a further order finding the defendant in contempt of this Honorable Court in failing to comply with said order, dated April 8, 1977, and imposing punishment for such contempt, and for a further order awarding plaintiffs reasonable attorney's fees and costs in bringing on this motion and additional attorney's fees in defending against the defendant's cross motion, and for such other and further relief as to the Court seems just and proper.

s/ SHELDON TABAK
SHELDON TABAK

Sworn to before me this
12th day of May, 1977.

Notary Public

STEPHEN B. ROBERTS
Notary Public, State of New York
No. 41-4612037
Qualified in Queens County
Term Expires March 30, 1979

AFFIDAVIT OF MARVIN SCHWARTZ, ESQ., FOR OFFSHORE DIVISION AND INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, IN OPPOSITION TO CROSS-MOTION FOR CLARIFICATION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

GERALD L. JOHNSON, CHARLES A. HEMMING, ORION A. LARSON, ROBERT THOMPSON, VIRGIL VALENTINE, individually and as members of the International Organization of Masters, Mates and Pilots of America, AFL-CIO, and the Offshore Division thereof,

Plaintiffs,

-against-

FRANK T. SCAVO, as President of the International Organization of Masters, Mates and Pilots and as Executive Officer of the Offshore Division,

Defendant.

----------x

77 Civ. 489 (LWP)

AFFIDAVIT

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

MARVIN SCHWARTZ, being duly sworn, deposes and says:

I am the attorney for the Offshore Division and International Organization of Masters, Mates and Pilots and I submit this affidavit on their behalf.

JUDGE PIERCE'S APRIL 8, 1977 ORDER CONTAINED SPECIFIC AND CLEAR LANGUAGE WHICH REQUIRED SCAVO TO DO CERTAIN ACTS AND TO REFRAIN FROM CERTAIN ACTS

The Order handed down by Judge Pierce on April 8, 1977 is clear especially when read in conjunction with the March 11, 1977 Opinion. The defendant Scavo is required to comply with the mandates of the International Convention by submitting such

referenda as were authorized by the International Convention, and further that Scavo is permanently enjoined from submitting to the membership such referenda as were prohibited by the International Convention. It fits perfectly within the classic language of Lichtenstein v. Lichtenstein, 425 F. 2d 1111, 1113 (C.A. 3rd 1970). In his Opinion of March 11, 1977, Judge Pierce specifically referred to various International Convention resolutions, including the two relevant resolutions -- #57 and #85, and found them to be duly passed by accredited delegates to the Convention and further found them to be fair and reasonable interpretations of the International Constitution and the Offshore Division By-Laws.

Resolution #57 contains the following directive language with regard to Scavo's Proposition No. 2:

> "That the action of the International President in promulgating and seeking and causing to be sent out to the Offshore Division membership a referendum ballot by which the Offshore Division membership was given a choice to vote on a proposition stated to be promulgated by him pursuant to the International Constitution, Article VI, Section 1(i), relating in part to a reduction in Offshore Division membership dues, which proposition was sent out as an alternative to a proposition promulgated by membership petition, was and is in violation of the International Constitution and the Offshore Division By-Laws, and consequently was and is illegal, void and a nullity and all activities with respect thereto shall forthwith cease and terminate and notification thereof shall forthwith be given to the membership of the Offshore Division, the American Arbitration Association and all other persons and parties having any interest therein or connection therewith, including the Honorable Lawrence W. Pierce, U.S. District Judge for the Southern District of New York."

Resolution #85 contains the directive that Proposition No. 1, the 15% membership petition:

> "...be forthwith sent out separately to the Offshore Division membership in a referendum ballot to be voted for on a 'yes' or 'no' basis."

Immediately after Judge Pierce's Order was filed, I distributed a memorandum to all General Executive Board members and Offshore Division Executive Council members which, of course, included the defendant Scavo. The memo dated April 12, 1977 reads as follows:

> "Enclosed is a copy of Order of Judgment entered on April 8, 1977 by the Hon. Lawrence W. Pierce.
>
> The order should be read in conjunction with the Court's decision, a copy of which I have previously sent to you. In essence, the resolutions of the San Diego International Convention have been upheld and the defendant, his agents, servants, attorneys, etc., are required to comply with those resolutions. Also the application by the defendant for a stay pending appeal was denied.
>
> I will, of course, be glad to answer any questions."

Thereafter, Scavo filed his Notice of Appeal, dated April 14.

The defendant Scavo never commented to me about the memorandum nor did he ask any questions about the Order. The first time he raised any question about the meaning of the Order was on April 28 and April 29 at the Offshore Division Executive Council Meeting in Baltimore. (See pp. infra., for that discussion).

THE DEFENDANT SCAVO UNDERSTOOD WHAT WAS EXPECTED OF HIM, EVEN BEFORE THAT ORDER WAS SIGNED -- I.E., THAT HE MUST FORTHWITH SUBMIT PROPOSITION 1 TO THE MEMBERSHIP

After Judge Pierce's decision, dated March 14, 1977, each of the three attorneys submitted proposed orders, along with accompanying explanatory letters. Scavo also asked for a stay. Cohen, in his letter of March 24 to Judge Pierce on behalf of Scavo asked for a stay, and in support of that request, stated in relevant part as follows:

> "There is a substantial benefit to the membership of the International Organization of Masters, Mates and Pilots were a stay to be granted and there is no detriment to any of the parties or to the members of the International Organization of Masters, Mates and Pilots. Mr. Schwartz in his desperate effort to find a detriment chooses to totally misconstrue and misrepresent the intentions of President Scavo with respect to forwarding a referendum to the membership as to Proposition 1. President Scavo has repeatedly represented to this Court that it is his judgment that the membership of the International Organization of Masters, Mates and Pilots be given the broadest possible control over their own destiny and that referenda should be submitted to the membership whenever possible. Under the circumstances of this case, it is not only a fact which should be well known and understood by Mr. Schwartz, but also a commitment of President Scavo that subject to review by the Department of Labor, under its power to supervise the International Organization of Masters, Mates and Pilots election of 1977, President Scavo would cause Proposition 1 to be submitted to the members of the International Organization of Masters, Mates and Pilots as expeditiously as possible, with proper instructions agreeable to the

> Department of Labor and to the American Arbitration Association indicating that the results of such a referendum would be effective in the event that the decision of this Court were affirmed, but that the results of the prior referendum, which is the subject matter of this action would be effective in the event the decision was reversed on appeal.
>
> To this effect, President Scavo has already arranged for an appointment with Mr. Gumpertz of the Department of Labor upon President Scavo's return from the Constitutional Convention of the International Organization of Masters, Mates and Pilots currently taking place in San Francisco. [Emphasis added]

Thus, Scavo has not only always understood that Proposition 1 must be submitted to the membership but represented to Judge Pierce that he was going to do so, even if Judge Pierce granted his request for a stay --- because there never has been any question about the validity of Proposition 1, especially after the action of the Convention and Judge Pierce's ruling. Can Scavo seriously argue that the Court of Appeals is going to rule that Proposition 1 does not have to be sent out?

Finally, and in addition to all of the above, on March 16 -- shortly after Judge Pierce's decision and substantially before the Order was signed, Scavo sent a lengthy telex to the membership, explaining Judge Pierce's decision. That telex reads in full as follows:

> "TO ALL PORTS AND MMP CONTRACT VESSELS
> TO BE POSTED AND READ AT NEXT MEETING
>
> Dear Sirs and Brothers:
>
> A decision was issued yesterday by Judge Pierce of the United States District Court for the Southern District of New York, which appears to have the effect of preventing the members of the

Offshore Division from having their votes counted on whether or not to reduce the vacation benefits assessment from 6 percent to 4 percent and from having their votes counted with respect to fiscal autonomy of the Offshore Division Funds.

Judge Pierce's Decision also appears to have the effect of preventing a referendum directed by the President from going out to the members of the Offshore Division with respect to a proposed reclassification of ports which would effectuate a savings of over $1,200,000. for the Union over the next three years should it be adopted. It is regrettable that a handful of Union officials and their political allies have seen fit to use the Courts to prevent the members of the Offshore Division from deciding these issues for themselves. It should be clear to each of you that the three court actions brought regarding the referenda were all brought by these union officials and their political allies. I believe that these officials and the Court were wrong as a matter of law and as a matter of democratic trade unionism. I have already determined that an appeal should be taken from Judge Pierce's Decision and shall seek an expedited appeal. Attempting to prevent waste and extravagance and to reduce union dues may be unorthodox and unusual steps to be attempted by a Union President. I believe that I have the mandate from the membership to attempt to prevent waste and extravagance and to reduce union dues and I shall continue my efforts despite yesterday's temporary setback.

Fraternally,

F. T. Scavo
International President"

SCAVO WAS CAREFUL TO APPEAL FROM ALL OF JUDGE PIERCE'S ORDER AND TO SEEK A STAY OF ALL OF THAT ORDER SO THAT THE REQUIREMENT THAT HE COMPLY WITH RESOLUTION #85, WHICH REQUIRED PROPOSITION 1 BE SENT OUT FORTHWITH, WOULD ALSO BE STAYED

Despite his March 24 letter to Judge Pierce which recognizes that Proposition 1 must be sent out, quoted above, Scavo appealed from all of Judge Pierce's Order and sought a stay of all of the Order, pending his request for an expedited appeal. He understood that his request for such a stay included Judge Pierce's direction that he comply with Resolution #85. Nowhere in his accompanying affidavit, and at no time during his oral argument before the Court of Appeals, did Cohen indicate that Scavo would send out Proposition No. 1.

Scavo seems to claim, on appeal, that not only does he have the right to send out his own referendum, Proposition No. 2, but he also has the right to stay Proposition No. 1 until he can send out his Proposition No. 2; and that he has the right to require that both propositions be placed on one ballot. But, to repeat, and as Scavo's March 24 letter shows, there is really no dispute between the parties that the Convention acted fairly, reasonably and properly in mandating that the 15% membership petition (Proposition No. 1) be submitted to the Offshore Division membership forthwith for a "yes" or "no" vote.

THE PURPOSE OF DEFENDANT SCAVO'S CROSS-MOTION TO CLARIFY JUDGE PIERCE'S ORDER IS SOLELY "TACTICAL"

Judge Pierce's Order was entered April 8, 1977. The

Notice of Cross Motion is dated May 11, 1977. Between April 8 and May 11, defendant Scavo sent telexes; wrote official correspondence; met with the Department of Labor; filed an Order to Show Cause before the Court of Appeals with accompanying Affidavit; argued before the Court of Appeals; and received the Court of Appeals' Decision (May 6) which referred specifically to the possibilities of contempt. But it was not until the plaintiffs filed a Motion for Contempt (May 9) that defendant Scavo filed his Cross Motion to clarify the Order.

The type of clarification that defendant Scavo now requests was objected to strenuously by Cohen when the parties' proposed Orders were being submitted to Judge Pierce. Both the Tabak and Schwartz Orders were quite specific. The Cohen letter, dated March 18, objected to the Tabak and Schwartz Orders. In that letter, Cohen described his proposed Order on behalf of defendant Scavo as follows:

> "Defendant's (Scavo's) proposed Order is restricted to the decretal portion of the Court's Opinion as reflected on page 10 thereof." [Emphasis Added]

The decretal portion of Judge Pierce's Opinion, on page 10, referred to by Cohen, reads as follows:

> "Accordingly, plaintiffs' motion for an Order permanently enjoining defendant Scavo, and all others acting in concert therewith, from submitting referenda having the effect of amending the by laws of the Offshore Division without adhering to the provisions of Article XVIII of the Offshore Division By-Laws is hereby granted."

It is essential to note that not a word is said about Proposition 1. Why?:

1. Because no one could or did any longer question the validity of International Convention Resolution #85 which required the submission of Proposition No. 1 forthwith to the membership for a "yes" or "no" vote. At the trial before Judge Pierce, it was stipulated to between the parties as being duly passed by the duly accredited delegates to the International Convention.

2. Because the basic issue before Judge Pierce was the right of defendant Scavo to initiate on his own referenda which would amend the Offshore Division By-Laws - i.e., to submit Proposition No. 2.

3. Because it was clear from Judge Pierce's Opinion and was accepted by Cohen at that time (as well as later in his March 24 letter to Judge Pierce, see pp. 4 and 5, supra,) that the membership's 15% petition was valid and Proposition 1 was to be submitted forthwith to the membership for a "yes" or "no" vote.

THE PORTION OF THE COHEN AFFIDAVIT WHICH SETS FORTH THE RELEVANT EVENTS OF THE APRIL 28-29 OFFSHORE DIVISION EXECUTIVE COUNCIL MEETING, IS SERIOUSLY INCORRECT

Cohen's affidavit, and its description of the relevant events of the April 28-29 Offshore Division Executive Council Meeting, submitted in support of defendant Scavo's Cross Motion, is seriously incorrect. Hopefully this is because Cohen was not present and the transcript was not available to him. I was present at that Offshore Division Executive Council meeting and the following relevant events took place.

1. Scavo moved to shift the burden of compliance with Judge Pierce's Order to the Offshore Division Executive Council and the Offshore Division Executive Council rejected Scavo's motion.

2. The Offshore Division Executive Council moved that Scavo comply forthwith with Judge Pierce's Order. Scavo attempted to argue against such a motion on the ground that he didn't have to do anything because the Offshore Division Executive Council had just rejected his motion that they comply with Judge Pierce's Order. The Offshore Division Executive Council rejected that argument and adopted the motion that Scavo comply forthwith with Judge Pierce's Order.

3. Scavo asked if Judge Pierce's Order required him to send out Proposition 1, separately. I advised that this had always been the case since Proposition 1 was clearly valid. Scavo responded by saying that this was not so, so far as he was concerned.

4. Scavo insisted on a ballot committee, saying he wouldn't be responsible for Proposition 1, and the Offshore Division Executive Council conceded, and moved to use the "standing ballot committee" which had been used for several recent non-related referenda.

I have been advised that it was not until after the Court of Appeals ruled on May 6 that a solid effort was made by Scavo to collect the Ballot Committee which will not meet in New York on May 16.

THE SCAVO TELEX TO SCHWARTZ, DATED MAY 9, REPEATED THE SAME QUESTIONS WHICH HAD BEEN ANSWERED AT THE OFFSHORE DIVISION EXECUTIVE COUNCIL MEETING APRIL 28-29, AND WAS OBVIOUSLY SENT "FOR THE RECORD"

Except for one, each question in the Scavo telex had been answered at the April 28-29 Offshore Division Executive Council meeting. He had advised me that he would talk "to a lawyer" when he didn't agree with my answers. Understandably, he was hostile to any advice I gave him. Scavo's telex was obviously "for the record." (As I look at my responding telex now -- particularly in view of all that happened in the two days at the Baltimore Offshore Division Executive Council meeting -- I think it is a model of self-restraint).

The one exception -- the question not previously raised -- is the question contained in Scavo's telex which read as follows:

> "What is the status of the Ballot which contains Proposition 1 and Proposition 2 at this point."

Scavo then followed with various correspondence to me and the plaintiffs urging the counting of the recently concluded balloting on the ballot which contains Proposition 1 and Proposition 2 in order to see if Proposition 1 passed -- and thus to avoid the unnecessary expense of sending out Proposition 1. Let us now consider the implication of this new Scavo proposal.

SCAVO'S NEW PROPOSAL TO COUNT THE BALLOT CONTAINING BOTH PROPOSITION 1 AND PROPOSITION 2 SHOULD BE REJECTED

Scavo has succeeded in delaying the sending out of Proposition 1 long enough so that he now feels he can get some advantage by counting the recently concluded ballot which contains the illegal Proposition 2. He argues that he seeks to "avoid unnecessary expense" because Proposition 1 may have received a majority vote. After all of the shifting in the Scavo-Cohen positions which have been described above in this Affidavit, it is hard to accept this new proposal as being made in good faith. I indicated as much to Scavo when I answered his letter of May 10 which contained this new proposal. My answering letter, in relevant part, reads as follows:

> "With regard to your interesting suggestion that no harm can occur by counting the recently concluded balloting on Proposition 1 and Proposition 2, you and I both really know your purpose and the harm that can occur.
>
> You have admitted on various occasions, and specifically in this litigation, that you disapproved of Proposition 1. In New Orleans recently, you admitted to me what has been obvious to everyone. You told me that your submission of Proposition 2 was meant as an "end run" to defeat Proposition 1. As you said, you were sure that Proposition 2 would pass since it simply proposed double the dues reduction contained in Proposition 1.
>
> Obviously you know that the chances of Proposition 1 receiving a plurality vote is slight, to say the least. As far as receiving a majority, as required by the Offshore Division By-Laws, you know that those chances are nil, particularly with the ballot being set up the way it was -- on an "either-or basis".

In any event, the Proposition 1 -- Proposition 2 ballot has been declared void by Convention resolution and Judge Pierce's Order. An attempt, as you suggest, to put Proposition 1 into effect, even if it prevailed by majority vote, would violate the resolution, Judge Pierce's Order, and would undoubtedly get the Union in further litigation.

Since we both understand the political advantage you would achieve by counting the ballots, and having Proposition 2 pass, (as we both agree it most certainly will), I will make no further comment.

CONCLUSION

Except for other separate and independent events, Scavo would have already succeeded in intentionally causing enough delay so that Proposition 1 could no longer be submitted to the membership in time for the regular 1977 triennial election. Unless this Court takes strong positive action now, he will finally succeed in those efforts. Further, Scavo should pay the legal fees incurred by the Offshore Division and the International because of his delay in submitting Proposition 1 as required by Judge Pierce's Opinion and Order; and as promised and represented in the Cohen letter of March 24, 1977.

MARVIN SCHWARTZ

Sworn to before me this

16th day of May, 1977.

Eileen M. Lefebure

EILEEN M. LEFEBURE
Notary Public, State of New York
No. 31-4600484
Qualified in New York County
Term Expires March 30, 1978

AFFIDAVIT OF ALLEN B. BRESLOW, ESQ., FOR DEFENDANT SCAVO, IN OPPOSITION TO MOTION FOR CONTEMPT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

GERALD L. JOHNSON, CHARLES A. HEMMING, ORION A. LARSON, ROBERT THOMPSON, VIRGIL VALENTINE, individually and as members of the International Organization of Masters, Mates and Pilots of America, AFL-CIO, and the Offshore Division thereof,

Plaintiffs,

-against-

FRANK T. SCAVO, as President of the International Organization of Masters, Mates and Pilots and as Executive Officer of the Offshore Division,

Defendant.

----------x

77 Civil 489 (LWP)

AFFIDAVIT IN OPPOSITION of MOTION FOR CONTEMPT

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

ALLEN B. BRESLOW, being duly sworn deposes and says:

1. I am a member of the law firm of Jaffe Cohen Crystal & Mintz, attorneys for defendant FRANK T. SCAVO, and a member of the Bar of this honorable Court, am fully familiar with the matters hereinafter recited, and make this affidavit in opposition to the motion to punish FRANK T. SCAVO for contempt.

2. It is important for the Court to be aware of certain facts and happenings of the past few days:

(a) On May 16, 1977 a meeting of the Ballot Committee of the Offshore Division of the International Organization of Masters, Mates and Pilots was held at union headquarters. The Ballot Committee was called into session by defendant Scavo, after the Offshore Division Executive Council had approved the

formation of such a committee at its meeting on or about April 27, 1977. After a lengthly discussion the Ballot Committee took the following steps; (i) it took the position that it had no jurisdiction in connection with Proposition 1 and 2 previously mailed to the membership; (ii) it formulated language for a legend to be placed on the referendum ballot to be sent to the membership of the Offshore Division dealing with the Proposition 1; (iii) it established a 90 day period for balloting; (iv) it directed that the American Arbitration Association supervise the referendum and deferred further discussion of the mechanical procedures to be followed in the referendum until a meeting with the American Arbitration Association, and; (v) directed that the language of the referendum be submitted to the Department of Labor for approval.

(b) The ballot was submitted for approval to the Department of Labor.

(c) A meeting was held with the American Arbitration Association to establish the mechanical procedures to be followed in the processing of the referendum.

Thus as of this date Captain Scavo has taken the necessary steps in order to submit Proposition 1 to the membership and has done so in accordance with the guidelines and procedures established by the Offshore Division Executive Counsel of the International Organization of Masters, Mates and Pilots, and the Ballot Committee appointed by the Offshore Executive Council. It should be noted that once Captain Scavo received the established guidelines and procedures he caused immediate and positive action to be taken.

3. Plaintiffs would have this Court find Captain Scavo's actions to be contemptuous. Yet, this Court's order directing Proposition 1 to be submitted to the membership was entered on April 11, 1977, some 35 days ago. Since the entry of that order Captain Scavo has not sat idly by, nor has he willfully delayed as plaintiffs will attempt to convince this Court. In fact Captain Scavo, as is his right, filed a Notice of Appeal, and sought a stay of this Court's order as well as an expedited appeal. Even prior to the argument before the Circuit Court of Appeals, Captain Scavo called for a meeting of the Offshore Division Executive Council to be held on or about April 20, 1977. That meeting was adjourned because of circumstances beyond Captain Scavo's control, to wit; a strike of the International Longshoremen's Association. Thereafter on or about April 27, 1977, the Offshore Division Executive Council met, with plaintiffs present and participating, at which Captain Scavo presented a resolution, the purpose of which was to authorize the submission of Proposition 1 to the Department of Labor for its approval, and upon receiving same, to the membership to be voted upon. Copy of said resolution is annexed hereto and made a part hereof as Exhibit "A" The Offshore Division Executive Council chose to table that resolution and instead set up a Ballot Committee to coordinate and process the referendum.

4. Subsequent to the foregoing Captain Scavo's application to the Second Circuit Court of Appeals for a stay of this Court's order, or in the alternative for an expedited appeal was argued, and on May 5, 1977 the Circuit Court of Appeals rendered its decision denying the application in full.

5. On May 9, 1977 Captain Scavo sought the advice of the International Counsel, Marvin Schwartz, by telex with regard to certain questions pertaining to this Court's order. See Exhibit "C" annexed to defendant's Cross-Motion dated May 11, 1977. On the very same day Captain Scavo received a return telex from Marvin Schwartz, International Counsel which was not responsive to his prior inquiries. See Exhibit "D" annexed to defendant's Cross-Motion dated May 11, 1977. Likewise on May 9 1977 plaintiffs instituted the within motion to hold Captain Scavo in contempt which was received on May 10, 1977

6. From the above chronology it is excruciatingly clear that Captain Scavo has acted expeditiously and in accordance with this Court's order as he understood it. Plaintiffs in their motion to hold Captain Scavo in contempt would seek to deny Captaion Scavo his right to request this Court to stay its judgment pending an appeal, denying his right to seek a stay from the Circuit Court of Appeals, and in addition to punish him for exercising his constitutionaly given rights. Yet, despite all of this, Captain Scavo during the interim period expeditiously took steps to implement this Court's order to the best of his understanding despite lack of cooperation from the International Counsel, despite an intervening International Longshoremen's Association strike and despite the fact that the Offshore Division Executive Council tabled its resolution, and created a Ballot Committee to coordinate and supervise the processing of the referendum.

7. Thus, your deponent verily believes that Captain Scavo has acted in good faith and that plaintiffs motion to hold Captain Scavo in contempt is designed purely for the purpose of embarrassing Captain Scavo and deriving political benefits at the expense of Captain Scavo.

WHEREFORE, it is respectfully urged that Plaintiffs' motion to punish Captain Scavo for a contempt of this Court be denied in all respects and that Captain Scavo be further awarded reasonable attorney's fees and costs in defending this motion, and that this Court render such other and further relief as it may deem just and proper.

ALLEN B. BRESLOW

Sworn to before me this

17th day of May, 1977.

Notary Public

ROBERT J. KIGGINS
Notary Public, State of New York
No. 24-4611049
Qualified in Kings County
Term Expires March 30, 1977

EXHIBIT "A" TO BRESLOW AFFIDAVIT - RESOLUTION CONCERNING RECLASSIFICATION OF PARTS AND DUES REDUCTION

RESOLUTION CONCERNING
RECLASSIFICATION OF PORTS
AND DUES REDUCTION

WHEREAS, a petition was submitted purportedly signed by 15% of the membership of the Offshore Division in good standing, seeking a referendum reclassifying ports and reducing that portion of membership dues which is based on vacation pay from 6% to 5%; and

WHEREAS, that referendum together with a referendum proposed by International President Scavo, seeking a dues reduction from 6% to 4% was submitted to the membership of the Offshore Division for approval by secret ballot; and

WHEREAS, the 63rd Convention of the International Organization of Masters, Mates and Pilots adopted resolutions which affirmed that the International President did not have the authority to initiate referenda to amend the International Constitution or the Offshore Division By-Laws; and

WHEREAS, United States District Judge Lawrence W. Pierce has ruled that the International President may not submit any referendum not in compliance with the procedures provided for in the International Constitution; and

WHEREAS, United States District Judge Lawrence W. Pierce has also directed the International President to comply with the mandates of the International Convention as

embodied in the resolutions duly passed at such Convention by submitting to the membership of the Offshore Division such referenda as are in compliance with the International Constitution, the By-Laws of the Offshore Division and the resolutions of the International Convention in accordance with the established procedures for submission of such referenda and in accordance with such procedures as are established by the United States Department of Labor; and

WHEREAS, the By-Laws of the Offshore Division provide for the submission to membership vote of any amendments to the Offshore Division By-Laws by a majority vote of the Offshore Division Executive Council; and

WHEREAS, it has never been determined that the proposed petition was actually signed by 15% of the membership of the Offshore Division in good standing,

NOW, THEREFORE, be it

RESOLVED, that the International President shall immediately submit to the Department of Labor for approval a referendum in the following form:

These amendments to the By-Laws of the Offshore Division were initiated by membership petition and approved by a majority of the Offshore Division Executive Council.

I. Article III, Sections 1(b), 1(c) and 1(d) shall be deleted in their entirety and the following language substituted:

Article III, Section 1(b): Offshore Ports shall be classified on the basis of service to the membership. Port classifications approved by this referendum vote shall not be changed for a minimum period of five years following the adoption of this amendments unless such change is submitted to a referendum vote of the membership.

Port agents shall be elected in the following ports: New York; New Orleans; Houston; Wilmington, California; San Francisco; Seattle.

Executive Assistant Port Agents shall be elected in the following Ports: New York, New Orleans, San Francisco.

Assistant Port Agents shall be elected in the following ports: New York (3), New Orleans (2), Houston (1), Baltimore (1) Galveston (1), San Francisco (2).

Field Representatives may be appointed in the following ports: Philadelphia; Norfork; Mobile; Tampa; Port Arthur; Honolulu; Portland, Oregon; Boston; Jacksonville, Fl.; Charleston, S.C.; San Juan, Puerto Rico; Hollywood, Fl.

II. Article III, Section 1(c): The three elected Vice Presidents shall not be in addition to the elected Port Agents. The Vice President (Atlantic) shall be the Port Agent of the Port of New York, the Vice President (Pacific) shall be the Port Agent of the Port of San Francisco, the Vice President (Gulf) shall be the Port Agent of the Port of New Orleans.

III. Article III, Section 1(d): As economic necessity or as service to the membership may require, the Offshore Division Executive Council, shall, by its majority vote, have the authority to close, reclassify or merge ports and to designate all Field Representatives subject to the limitation of Section 1(b) above.

IV. Article IX, Section 1, shall be amended wherever and in such respects as are necessary to provide the following:

1. Only duly elected Port Agents shall be members of the Offshore Division Executive Council in addition to the first six enumerated officers named in this Section 1.

V. Article XI, "Income and Assets" shall be amended to substitute five (5%) percent in lieu of six (6%) percent of the gross amount of each vacation benefit received for work performed on any MM&P contracted vessel, and to substitute five (5%) percent in lieu of six (6%) percent of each vacation benefit received by every MM&P Offshore Division Official.

and be it further

RESOLVED, that the referendum, as approved by the Department of Labor be immediately submitted to the membership of the Offshore Division for secret ballot vote in accordance with the provisions of the By-Laws of the Offshore Division.

MEMORANDUM ORDER OF COURT DENYING COMPLIANCE

77 Civ. 489 GERALD JOHNSON, et.al -v- FRANK SCAVO, President

ENDORSEMENT ORDER

By the attached papers, plaintiffs seek an order compelling the defendant to comply with the order of this Court dated April 8, 1977 and for an order adjudging defendant to be in contempt of that order. The Court, having been informed by plaintiffs at a hearing held on this matter that defendant has begun to comply with said order, it is

ORDERED that this motion be and hereby is denied with leave to renew on or after August 26, 1977 and that future motions to compel compliance be made on or after that date absent special circumstances brought to the Court's attention.

SO ORDERED.

Dated: New York, New York
June 13, 1977

LAWRENCE W. PIERCE
U.S.D.J.

U.S. DISTRICT COURT
FILED
JUN 17 1977
S.D. OF N.Y.

MICROFILM
JUN 17 1977

BEST COPY AVAILABLE

MEMORANDUM ORDER OF COURT DENYING CLARIFICATION

Service of copy

Please take Notice that the within is a (certified) true copy of an order duly entered in the office of the clerk of the within named court on

19

Dated,

Yours, etc.,

JAFFE COHEN CRYSTAL & MINTZ

Attorneys for

Office and Post Office Address

278 SEVENTH AVENUE

NEW YORK, N. Y. 10001

To

Attorney(s) for

Notice of settlement

Please take notice that an order of which the within is a true copy will be presented for settlement to the Hon. at one of the Judges of the within named Court, at on 19

at

Dated,

Yours, etc.,

JAFFE COHEN CRYSTAL & MINTZ

Attorneys for

Office and Post Office Address

278 SEVENTH AVENUE

NEW YORK, N. Y. 10001

To

Attorney(s) for

Index No. 77 Civ. 489 (LWP) Year 19

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GERALD L. JOHNSON, CHARLES A. HEMMING, ORION A. LARSON, ROBERT THOMPSON, VIRGIL VALENTINE, etc.,

Plaintiffs

- against -

FRANK T. SCAVO, as President, etc.

Defendant.

NOTICE OF CROSS-MOTION and SUPPORTING AFFIDAVIT AND MEMORANDUM

JAFFE COHEN CRYSTAL & MINTZ

Attorneys for Defendant

Office and Post Office Address, Telephone

278 SEVENTH AVENUE

NEW YORK, N. Y. 10001

(212) OX 1-1200

To

Attorney(s) for

Service of a copy of the within is hereby admitted.

Dated,

Attorney(s) for

RECEIVED
MAY 1 0 1977
LAWRENCE W. PIERCE.

COPY RECEIVED
MAY 12 1977
TABAK, STEIN & ROMANO
ATTORNEYS FOR

77 Civ. 489 GERALD JOHNSON, et.al -v- FRANK SCAVO, President

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ORDERED that this motion be and hereby is denied with leave to renew on or after August 26, 1977 and that future motions to compel compliance be made on or after that date absent special circumstances brought to the Court's attention.

SO ORDERED.

Dated: New York, New York
June 16, 1977

U.S. DISTRICT COURT
FILED
JUN 17 1977
S.D. OF N.Y.

LAWRENCE W. PIERCE
U.S.D.J.

JUN 17 1977

BEST COPY AVAILABLE